City of Lafayette
Staff Report
City Council

Meeting Date: March 10, 2025

Staff: Anna Tolle, Assistant Planner

Subject: Approval of the Plaza Park Shops Tenant List pursuant section 5.3 of the Poy Overlay Agreement. Project is located at 3535-3541 Plaza Way & 996-998 Moraga Rd. APN 243-222-020

SUMMARY

The purpose of this report is to review and approve a revised Tenant List for the Plaza Park Shops pursuant to section 5.3 of the Poy Overlay Agreement.

BACKGROUND & DISCUSSION

In October 2012, the City Council adopted Ordinance 612 approving the Plaza Way Overlay, Consolidated Parking Plan, Vision Maps and Design Guidelines. In June 2013, the City Council approved the Poy Overlay Agreement and Parking Agreement between Bill L. Poy and Sheu G. Poy ("Owner") and the City of Lafayette. Section 5.3 of the Poy Overlay Agreement states:

The City maintains discretion over the specific tenants in both the ground and upper floors as set forth in this Section 5.3 and the Plaza Way Overlay District and Owner shall obtain the City Council's written approval of a list of all potential tenants (not to exceed thirty (30) tenants for the Property) ("Tenant List") prior to final inspection or certificate of occupancy for the first tenant space. Notwithstanding the foregoing, the Council shall review and take action on the Tenant List within thirty (30) days of submittal thereof.

The Poy Overlay Agreement also limits the number of eating and drinking establishments to a maximum of 65% (section 5.4 of the Overlay Agreement). The initial list, approved by Council on January 13, 2014, contained mostly restaurant uses. The Owner indicated once the initial uses were established, a complementary list of retail tenants would be provided.

Since the first approval, the list of allowable tenants has changed approximately 6 times. The current list has a high percentage of eating and drinking establishments (see table below). Given the restriction on the amount of food uses permitted, staff would suggest the next tenant list contain more retail uses.

The applicant requests to add the following tenants to the approved list:

Name	Description	Bay Area Locations
Boba Bliss	Tea/boba, coffee, and juice cafe	Mountain View, Castro Valley, Dublin CA
Cold Stone Creamery	Ice cream shop	Pleasant Hill, Danville, San Ramon
Benchmark Pizzeria	Pizza and casual Italian restaurant	Kensington
Woof Gang Bakery	Pet supplies and grooming	Palo Alto, San Jose
World Wrapps	Globally inspired wraps, bowls, and catering	San Ramon, Palo Alto, Santa Clara, San Francisco
Flour and Water Pizzeria	Pizza Restaurant	San Francisco
Heroic Italian	Casual Italian restaurant and catering	Berkeley, San Francisco
Devil & Angel Desserts	Tea/boba, doughnuts, soft serve ice cream	Concord, Walnut Creek, Milpitas
Asha Tea House	Artisan tea shop	Berkeley, San Francisco
Sharkey's Cuts for Kids	Hair salon specializing in children's haircuts	San Ramon, Pleasanton, San Jose
Souvla	Greek restaurant	San Francsico (multiple locations)
Haraz Coffee	Specialty coffee shop	San Francisco
Brioche de Paris	French bakery	Alamo

ANALYSIS AND COMMENTS

The tenant use and mix of the Project is of significant importance to the City in order to:

(1) ensure the correct balance of unique spaces and amenities so that the Plaza Way Overlay District retains its history, charm and character;

(2) enliven the street, increase pedestrian activity and create an area in which the community will gather for civic and cultural events; and

(3) encourage tenants who will take advantage of the visible location in the downtown and adjacency to the Lafayette Plaza.

In reviewing the Tenant List, the City Council may disapprove a potential tenant. Notwithstanding the foregoing, the City Council may not:

(1) disapprove any potential tenant in order to protect the competitive advantage of other business(es), however, this shall not preclude the City Council from disapproving a tenant based upon tenant mix of the Property; or

(2) condition its approval of the Tenant List based on the inclusion of other specific tenant(s).

The proposed tenant list provides a range of eating and drinking establishments and some limited retail options that would enliven the street, increase pedestrian activity, and take advantage of the visible location in the downtown and adjacency to the Lafayette Plaza. Generally, the City would like Plaza Way to be a special place that is sought out for one-of-a-kind establishments that can tailor their aesthetics to the historical character of the area. It is also the desire to provide food, retail, and service options that are currently lacking in the community. To that end, staff researched the websites and restaurant reviews of the proposed tenants and found the majority of them are in line with the goals of the Plaza Way Overlay district. The proposed tenants which have multiple nationwide franchise locations may not

contribute as fully to the unique, local identity cultivated in the heart of downtown Lafayette. Staff recommends the applicant to include more retail and service options in the next tenant list, with a continued focus on local or regional small businesses which will contribute to Lafayette's unique identity.

FISCAL IMPACT

None.

RECOMMENDATION

The Poys are the first property owners to opt into the Overlay District with signed agreements and have completed façade renovations of the existing buildings as well as contributions to the overlay parking fund. Occupancy of some of the tenant spaces through the approved tenant list has kick-started the long-awaited improvements on Plaza Way.

Staff recommends that the City Council approve the tenant list as proposed, accepting the 13 additional options and indicating an interest for the next tenant list to contain more retail options.

ATTACHMENTS

1. Tenant List Received January 28, 2025 (modified by staff to ensure correct hyperlinks)
2. Plaza Way Overlay District Regulations
3. Plaza Way Overlay Poy Agreement

List of Tenants for Park Plaza Shops

Received 1/28/2025

1. Boba Bliss www.bobablissofficial.com/
2. Cold Stone Ice Cream www.coldstonecreamery.com/
3. Benchmark Pizza www.benchmarkpizzeria.com/
4. Woof Gang Bakery www.woofgangbakery.com
5. World Wrapps www.worldwrapps.com
6. Flour and Water Pizzeria www.fwpizzeria.com/
7. Heroic Italian www.heroicitalian.com
8. Devil & Angel Desserts www.devilnangel.com/
9. Asha Tea House www.ashateahouse.com
10. Sharkey's Cuts for Kids www.sharkeyscutsforkids.com
11. Souvla www.souvla.com
12. Haraz Coffee www.harazcoffeehouse.com/
13. Brioche de Paris www.briochedeparisbakery.com

RECORDED AT REQUEST OF
AND WHEN RECORDED RETURN TO:
City of Lafayette LC
3675 Mt. Diablo Blvd, Suite 210
Lafayette, California 94549
Attn: Planning and Building Manager

Fee Exempt – Gov't Code §6103

(Space above for Recorder's Use)

PLAZA WAY OVERLAY AGREEMENT

between

THE CITY OF LAFAYETTE,
a California municipal corporation

and

Bill L. Poy and Sheu G. Poy

[Dated as of June 10, 2013 for reference purposes only]

THIS PLAZA WAY OVERLAY AGREEMENT ("Agreement") is entered by and between THE CITY OF LAFAYETTE, a California municipal corporation ("City") and Bill L. Poy and Sheu G. Poy (collectively, "Owner") with reference to the following facts:

RECITALS.

A. Plaza Way has a long and rich history of old pre-auto era buildings that distinguishes it from other parts of the downtown and because of this little room is provided for automobile parking. To address this, the City is amending the zoning ordinance to create the Plaza Way Overlay District. The Plaza Way Overlay District lays out a plan to increase the supply of parking within the overlay and provides for a cooperative arrangement by which property owners can lease their buildings without having to provide all of the required parking under current City standards in exchange for bringing the appropriate tenant mix and upgrades to the buildings. Owner has requested that the City enter into an agreement for the development of the Property, as defined below. City enters into this Agreement pursuant to the provisions of the City's General Plan, the City Municipal Code, and applicable City policies.

B. Owner is the owner in fee of that certain real property located at the southeast corner of Moraga Road and Plaza Way in the City of Lafayette, Contra Costa County, State of California, also commonly referred to as Assessor Parcel Number 243-222-020 and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property").

C. Owner has obtained City's conditional approval of a development proposal ("Development Proposal"), as described in attached Exhibit "B" attached hereto and incorporated herein by reference, to develop the Property in a manner consistent with the uses identified for the Property in the Plaza Way Overlay District and this Agreement.

D. This Agreement constitutes a current exercise of City's police powers to provide predictability to Owner in the development approval process by reducing the parking requirements consistent with the Plaza Way Overlay District and this Agreement in exchange for Owner's commitment to provide significant benefits to the City as set forth in this Agreement (collectively, "Benefits").

E. This Agreement allows City to realize significant economic, social, and public benefits, which will advance the interests and meet the needs of the City's residents and visitors to a greater extent than otherwise permitted.

AGREEMENT

City and Owner agree as follows:

1. Effective Date of Amendment. This Agreement is dated June 10, 2013, for reference purposes only. This Agreement shall not become effective until the date ("Effective Date") on which all of the following are true:

   a. This Agreement has been approved and executed by the appropriate authorities of the Owner and has been delivered to the City;

b. This Agreement has been approved and executed by the appropriate authorities of the City;

c. The ordinance creating the Plaza Way Overlay District has been adopted and is in effect; and

d. All of the conditions precedent to the Effective Date of the Agreement have been satisfied or waived in writing by the Parties.

If all conditions precedent to the Effective Date have not been satisfied or waived in writing by the Parties by July 1, 2013, then unless this date is extended in writing by the Parties this Agreement shall not thereafter become effective and any prior signatures and approvals of the Parties relating to this Agreement shall be deemed void ab initio and of no force or effect. Upon the satisfaction of all conditions precedent to the Effective Date as set forth in this Section 1 and this Agreement becomes effective, the Parties shall promptly confirm the Effective Date in writing.

2. Interest of Owner. Owner represents that it has a legal or equitable interest in the Property and is authorized to enter into this Agreement.

3. City Council Findings. The City Council finds:

a. The Agreement is consistent with City's General Plan, Downtown Specific Plan and Plaza Way Overlay District.

b. The façade improvements called for in the Development Proposal will ensure that the block retains its history, charm and character.

c. The proposed uses will enliven the street, increase pedestrian activity and add to the unique character of the area.

d. The Development Proposal takes advantage of the Plaza Way Overlay District adjacency to Lafayette Plaza.

e. The Development Proposal improves vehicular and pedestrian circulation.

f. The Development Proposal increases the supply of parking within the Overlay District.

g. The Development Proposal is consistent with the Vision Maps.

h. The Agreement is in the best interests of the citizens of the City because the public health, safety and welfare will be served by entering into this Agreement.

4. GENERAL PROVISIONS.

4.1 Binding Effect of Agreement. This Agreement shall be recorded against the Property and shall run with the land. The "Development" as identified in the

Development Proposal and more particularly described in Exhibit "B" shall be carried out only in accordance with the terms of this Agreement and as otherwise set forth in the Development's entitlements approved by City. Unless this Agreement is terminated pursuant to the provisions herein, no portion of the Property shall be released from this Agreement.

4.2 Term of Agreement. The term ("Term") shall commence on the Effective Date. The Term shall be for an initial period of one (1) year from the Effective Date. If the Owner does not secure a building permit for the Development Proposal by the end of this one (1) year period, the Agreement shall expire unless otherwise extended as provided for in this Section 4.2. If a building permit for the Development Proposal is secured within this one-year period (as it may be extended), the Term of this Agreement shall continue in perpetuity unless terminated as provided herein. As provided within this Agreement, the Term may end earlier than the date it would otherwise expire. The Planning and Building Services Manager may approve an extension of the Term of up to one (1) additional year upon showing of good cause by the Owner and if a written request for an extension is received prior to the end of the initial one-year period. Additional extensions may be approved, subject to City Council review and approval.

4.3 Termination. This Agreement shall be deemed terminated and of no further effect upon the earlier occurrence of any of the following events:

(a) Expiration of the Term without an extension granted, as set forth in Section 4.2 of this Agreement;

(b) Entry of a final judgment setting aside, voiding or annulling the Agreement;

(c) The adoption of a referendum measure overriding or repealing the Agreement;

(d) As may be provided by other specific provisions of this Agreement.

4.4 Effect of Termination. Subject to Section 5.5 below, upon any termination of this Agreement, the only rights or obligations under this Agreement which either Party shall have are:

(a) The completion of obligations which were to have been performed prior to termination;

(b) The performance and cure rights set forth in Section 7 below; and

(c) Those obligations that are specifically set forth as surviving this Agreement, such as those described in Section 6 and 9.14 (b).

4.5 Amendment or Cancellation of Agreement. This Agreement may be amended from time to time or canceled only by the written consent of both City and Owner in the same manner as its adoption. Any amendment or cancellation shall be in a form suitable for recording in the Official Records of Contra Costa County, California. An amendment or other modification of this Agreement shall continue to relate back to the Effective Date of this Agreement (as opposed to the effective date of the amendment or modification), unless the amendment or modification expressly states otherwise.

4.6 Relationship of City and Owner. The contractual relationship between City and Owner arising out of this Agreement is one of independent contractor and not City. This Agreement does not create any third-party beneficiary rights.

4.7 Notices. All notices, demands, and correspondence required or permitted by this Agreement shall be in writing and delivered in person or mailed by first class or certified mail, postage prepaid, addressed as follows:

If to City, to:

City of Lafayette
3675 Mt. Diablo Blvd., Suite
210 Lafayette, California 94549
Attn: City Manager

With a copy to:

Best Best & Krieger LLP
2001 N. Main Street, Suite 390
Walnut Creek, California 94596
Attn: Malathy Subramanian, Esq.

If to Owner, to each of the following:

Bill Lim Poy
Sheu G. Poy
7638 Stockton Avenue
El Cerrito, CA 94530
Attn: Michael Poy

With a copy to:

Main Street Property Services, Inc.
3569 Mt. Diablo Blvd., Suite 200
Lafayette, CA 94549
Attn: Craig Semmelmeyer

City or Owner may change its address by giving notice in writing to the other at the address

listed above. Thereafter, notices, demands, and correspondence shall be addressed and transmitted to the new address. Notice shall be deemed given upon personal delivery or, if mailed, two (2) business days following deposit in the United States mail.

5. DEVELOPMENT OF THE PROPERTY.

5.1 Development. Owner may develop the Property in accordance with the Development Proposal. Notwithstanding the foregoing, upon any termination or breach of this Agreement, the reduced parking standards as specified in this Section 5 shall no longer apply and Owner may only continue development and/or operation of the Development upon meeting the parking standards then in effect as enumerated in the Lafayette Municipal Code unless otherwise mutually agreed to by the Parties.

5.2 Governing Parking Standards. The parking standards applicable to the Development Proposal and the Property shall be as provided for in Section 5.4 below. Provided, however, that in the event the City adopts new parking standards that further reduce the requirements below the applicable requirements in this Agreement that would otherwise be applicable to the Property but for this Agreement, then Owner may, in its discretion, adhere to said alternative requirements rather than those set forth herein.

5.3 Permitted Uses. The permitted uses on the Property on the ground floor shall be retail, eating and drinking establishments, as well as other uses that fulfill the goals of the Plaza Way Overlay District, as determined by the City Council and as otherwise approved by City in connection with the Development Proposal. Uses on upper floors are those that are permitted by right or with a land use permit in the underlying zoning district as provided for in the Lafayette Municipal Code. Residential uses are encouraged on the upper floors. The tenant use and tenant mix of the Project is of significant importance to the City in order to: (i) ensure the correct balance of unique uses and amenities so that the Plaza Way Overlay District retains its history, charm and character; (ii) enliven the street, increase pedestrian activity and create an area in which the community will gather for civic and cultural events; and (iii) encourage tenants who will take advantage of the visible location in the downtown and adjacency to the Lafayette Plaza. Therefore, the City maintains discretion over the specific tenants in both the ground and upper floors as set forth in this Section 5.3 and the Plaza Way Overlay District and Owner shall obtain the City Council's written approval of a list of all potential tenants (not to exceed thirty (30) tenants for the Property) ("Tenant List") prior to final inspection or certificate of occupancy for the first tenant space. In reviewing the Tenant List, the City council may disapprove a potential tenant. Notwithstanding the foregoing, the City Council may not: (1) disapprove any potential tenant in order to protect the competitive advantage of other business(es), however, this shall not preclude the City Council from disapproving a tenant based upon tenant mix of the Property; or (2) condition its approval of the Tenant List based on the inclusion of other specific tenant(s). For future changes in tenants, the City Council's written approval of a revised list of all potential

tenants shall be obtained in advance of execution of any lease for a new tenant for the Property. It is anticipated that the Owner may regularly update the Tenant List, as appropriate or desirable. Notwithstanding the foregoing, the Council shall review and take action on the Tenant List within thirty (30) days of submittal thereof.

5.4 Benefits. Owner shall do the following:

(a) Seek approval for the Property's building rehabilitation from the City's Design Review Commission and/or Planning Commission, which shall be consistent with the Plaza Way Design Guidelines, Vision Maps, and all other applicable City development standards and requirements within one (1) year of Effective Date of this Agreement.

Invest no less than One Million Dollars ($1,000,000) in improvements to the building located on the Property to cover historic preservation, structural and base building systems; said investment of funds shall not be used for interior tenant improvements. Owner shall complete and submit architectural drawings to the City for approval prior to July 31, 2013 and shall obtain building permits for the improvements to the building prior to October 1, 2013, but in no event later than the date required to do so under the Development Proposal's conditions of Approval (subject to any extensions granted by the City pursuant to applicable law). Owner shall complete the improvements to the building by October 1, 2014. The Owner's obligations under this Section 5.4 shall be subject to obtaining any and all necessary City and other governmental approvals, entitlements and permits to complete said improvements and further subject to the expiration of any and all applicable administrative appeals period(s) and the full and final resolution of any litigation brought challenging such approval(s). Owner may request an extension of time to commence construction of said improvements, and the City Council may grant the extension if proof of sufficient progress is shown. The time periods set forth in this Section 5.4(b) shall be tolled in the event of a force majeure, which shall include but not be limited to, acts of God, strikes, war, riots, fire (such causes hereinafter called "Force Majeure"); provided; however, Owner shall exercise due diligence to overcome any Force Majeure to its performance and shall promptly give oral notification to the City, and confirmed in writing within five (5) days thereafter. If performance is delayed due to a Force Majeure event, the time for that performance shall be extended for a period of time reasonably necessary to overcome the effect of the delay.

(b) Enter into a parking lease for the greater of: eight (8) spaces or twenty-five percent (25%) of the reduced parking requirement (as herein defined), for employee parking at the City lot located at 941 Moraga Road, or another City approved location, at a rate not to exceed Fifty Dollars ($50.00) per space per month. The parking rate shall be subject to a ten percent (10%)

increase every five (5) years. City may terminate the parking lease prior to its expiration, if City elects to develop its property and, in such event, City shall attempt to assist Owner in finding alternative parking. "Reduced parking requirement" shall mean the number of parking spaces that the Development Proposal requires after subtracting the following: reduced parking requirement for eating and drinking establishments of 1:100 sq. ft. of dining space and 1:500 sq. ft for kitchen/prep area, with a credit of six (6) on-street parking spaces and one (1) additional space to compensate for spaces lost during the construction of Lafayette Plaza. If employee parking is on property not owned by the City, Owner shall provide a copy of the lease or other reasonable written documentation of said parking arrangements to the City prior to issuance of occupancy permits for the Property, and Owner thereafter shall submit an annual verification that the employees are able to park at the approved offsite location. Notwithstanding the foregoing, the Development Proposal's reduced parking requirement shall be reduced to a total of three (3) offsite parking spaces until the McNeil Property (hereinafter defined) opts into the Overlay District, given that there are five (5) spaces onsite reserved for employees during the initial phase. Tenants that exist as of the Effective Date of this Agreement shall not be required to meet this requirement to park their employees off site, but may elect to voluntarily comply.

(c) Include in all new tenant leases: (i) a requirement for employees to park at the approved offsite location after such time as through access is granted across the McNeil Property (as defined below); (ii) a requirement for each employer to register and participate in the City's Transportation Demand Management program (511.ContraCosta.org) ("Program") including designating a point of contact; (iii) a requirement for each employer to register each employee in the Program; (iv) a requirement for employers to provide long-term bicycle parking for employees and short-term bicycle parking for customers. A copy of said leases or other reasonable written documentation shall be provided to the City prior to the issuance of building permits for the Development.

Create five (5) new parking spaces on the southern side of the Property prior to occupancy of the first new tenancy. These parking spaces shall be restricted to employee parking only until such time that through-access is granted across APN 243-222-019 ("McNeil Property"), which is currently owned by Mr. William McNeil, at which time the parking shall be made available to the public and shall not used by employees of the Property. As and when such through access is granted, the reduced requirement of three (3) offsite spaces shall be increased to eight (8) spaces to account for the loss of the five (5) employee spaces. Include in all new tenant leases, a copy of which or other reasonable written document shall be provided to the City prior to the issuance of building permits, a provision that no loading or unloading of large trucks shall occur on the southern side of the Property until such time that through access is granted across the McNeil

Property.

(d) Grant parking and access easements to the City for the five new parking spaces as described above for the purpose of implementing the Consolidated Parking Plan when the owner of the McNeil Property opts into the Plaza Way Overlay District.

(e) Deposit Thirty Four Thousand Dollars ($34,000) upon issuance of the first building permit for the Development and Thirty Three Thousand ($33,000) annually thereafter for two (2) consecutive years on the anniversary date of the first payment, for a total of One Hundred Thousand Dollars ($100,000) in a Plaza Way Parking Fund to be administered by the City; provided, however, that in the event Owner sells the Property prior to the required amount of $100,000 being paid to the City, then any such remaining amount then owed shall be paid to the City upon the close of escrow of the Property.

Failure to pay the required amount under this Section 5.4(e) when due shall become a lien on the Property. If the amount of the lien is not paid within thirty (30) days after written demand for payment by the City to the Owner, the City shall have the right to enforce the lien in the manner as provided in this Section. The parties hereto further mutually understand and agree that the rights conferred upon the City under this Section 5.4(e) expressly include the power to establish and enforce a lien or other encumbrance against the Property in the amount due under this Section 5.4(e), including any reasonable attorneys' fees and costs of the City in connection with such action. In any legal proceeding for enforcing such a lien against the Property, the prevailing Party shall be entitled to recover its attorneys' fees and costs of suit. The provisions of this Section 5.4(e) shall be a covenant running with the land and shall survive the Term of this Agreement until such time as Owner has made the required payments under this Section 5.4(e), and shall be enforceable by the City in its discretion, cumulative with any other rights or powers granted by the City under this Agreement or applicable law.

So long as payment is timely made under this Section 5.4(e), the City shall deposit matching funds in accordance with the timing outlined above. The purpose of this fund is for the acquisition and construction of the Consolidated Parking Plan consistent with the Plaza Way Overlay Vision Maps.

(f) Lease a maximum of sixty-five percent (65%) of the total Property for, eating and drinking establishments, which shall have a parking ratio of 1 space per 100 sq. ft. of seating area and 1 space per 500 sq. ft. of kitchen/prep area. The remaining thirty-five percent (35%) shall be leased to retail uses, which shall have a parking ratio of 1 space per 250 sq. ft. of net floor area or less.

5.5 Right to Develop Conditional. Owner acknowledges that City's approval of, and Owner's rights to develop, the Development are contingent and conditioned upon Owner entering into this Agreement, and that Owner may not develop the Development if Owner has not so entered into this Agreement and thereafter does not perform its obligations hereunder. In the event this Agreement is terminated as to any parcel or portion of the Property as provided in this Agreement, the rights and authorizations conferred or granted pursuant to this Agreement shall immediately terminate and cease to apply and govern the development of such parcel or portion of the Property. Owner recognizes that in the event this Agreement is terminated, the City may enforce the then existing parking standards on the Property and Owner waives any right or claim to challenge the application of such standards.

5.6 Staffing and Expedited Processing. City shall employ all lawful actions capable of being undertaken by City to (i) promptly accept all applications for the Development (collectively, "Applications") and work cooperatively with Owner to find those Applications are complete, and (ii) promptly process and take any and all necessary actions upon the Applications to facilitate development of the Development Proposal in accordance with applicable law.

5.7 Changes in Federal and State Law. The Property may be subject to subsequently enacted state or federal laws or regulations, which preempt local regulations, or mandate the adoption of local regulations that conflict with the Development. Upon discovery of a subsequently enacted federal or state law meeting the requirements of this Section, City or Owner shall provide the other Party with written notice of the state or federal law or regulation, provide a copy of the law or regulation, and a written statement of conflicts with the provisions of the Development. Promptly thereafter, City and Owner shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation. In such negotiations, City and Owner agree to preserve the terms of this Agreement and the rights of Owner as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with Owner in resolving the conflict in a manner which minimizes any financial impact of the conflict upon Owner. City also agrees to process, in the same expedited manner as set forth for Applications in Section 5.6, Owner's proposed changes to the Development as may be necessary to comply with such federal or state law and to process such proposed changes in accordance with applicable City procedures. Any delays caused by such changes in state or federal law shall toll the Term of this Agreement and the time periods for performance by Owner and City set forth in this Agreement accordingly.

5.8 Cooperation in Securing Other Governmental Approvals and Permits. City agrees to make its staff available, at Owner's cost, to assist Owner in securing permits and approvals (if any) required by other governmental agencies to assure Owner's ability to perform its obligations in a timely manner consistent with the Development Proposal and this Agreement. City does not warrant or represent that any other governmental permits or approvals will be granted.

5.9 Compliance with CEQA. The environmental impacts of the Development and this Agreement have been evaluated in the Mitigated Negative Declaration that was adopted concurrently with the approval of the Plaza Way Overlay District and this Agreement (the "Mitigated Negative Declaration"). City agrees to cooperate with Owner to process in a timely manner additional environmental study or report required under the applicable law (if any) in connection with the Development. Notwithstanding the foregoing, City acknowledges and agrees that the Mitigated Negative Declaration provides sufficient detail to satisfy the environmental review requirements for approval of the Development and this Agreement under the applicable law and regulations.

5.10 Timing of Development. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal. 3d 465 (1984), that the failure of the parties in that case to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the specific intent of the Parties to provide for the timing of Development in this Agreement. To do so, the Parties acknowledge and provide that Owner shall have the right, but not the obligation, to develop the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its subjective business judgment.

5.11 Conditions, Covenants and Restrictions. Owner shall have the ability to reserve and record such restrictions, conditions, and covenants ("CC&Rs") against the Property that Owner deems appropriate, in its sole and absolute discretion, that relate to the development, use and operation of the Development, provided such CC&Rs do not conflict with this Agreement or the Plaza Way Overlay Ordinance. Prior to recordation of such CC&Rs, Owner shall provide a copy of the CC&Rs to City for review and approval by the City Attorney. The City Attorney's review shall be limited to determining if the CC&Rs substantially comply with this Agreement and the Plaza Way Overlay Ordinance. If the City Attorney fails to provide Owner with a determination of substantial compliance within thirty (30) days following a written request by Owner, City shall be deemed to have approved the CC&Rs and Owner may record the CC&Rs against the Property. The CC&Rs may run with the land and bind Owner's successors and assigns.

6. THIRD PARTY LITIGATION.

6.1 General Plan Litigation. City has determined that this Agreement is consistent with its General Plan. Owner has reviewed the General Plan and concurs with City's determination. Neither Owner nor City shall have any liability under this Agreement or otherwise for any failure of City to perform under this Agreement, or for the inability of Owner to develop the Property as contemplated by the Development Proposal or this Agreement, if such failure or inability is the result of a judicial determination that part or all of the General Plan is invalid, inadequate, or not in compliance with law.

6.2 Third Party Litigation Concerning Agreement. Except in the event and to the extent of any gross negligence or willful misconduct on City's part, Owner shall, at Owner's expense, defend, indemnify, and hold City, its agents, officials and employees harmless from any claim, action or proceeding against City, its agents, officials or employees to attack, set aside, void, or annul the approval of this Agreement. City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in good faith in the defense of this Agreement`. City may in its discretion participate in the defense of any such claim, action or proceeding.

6.3 Indemnity. In addition to the provisions of Section 6.2 above, Owner shall indemnify and hold City, its officials, agents and employees and independent contractors free and harmless from any liability whatsoever, based or alleged upon any act or omission of Owner, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury or death (Owner's employees included) or any other element of damage of any kind or nature, relating to or arising from the Development, except in the event and to the extent any such liability arises from the gross negligence or willful misconduct of City. Owner shall defend, at Owner's expense, including attorneys' fees, City, its officials, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions of Owner. City may in its discretion participate in the defense of any such legal claim, action or proceeding and shall cooperate in good faith with Owner in its defense thereof.

6.4 Environmental Contamination. Owner shall indemnify and hold City, its officials, agents, and employees free and harmless from any liability, based or alleged, upon any act or omission of Owner, its officers, agents, employees, subcontractors and independent contractors which results in any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, except in the event and to the extent any such liability arises from the gross negligence or willful misconduct of City, Owner shall defend, at its expense, including attorneys' fees, City, its officials, agents and employees in any action based or asserted upon any such alleged act or omission of Owner. City may in its discretion participate in the defense of any such claim, action or proceeding. Notwithstanding anything to the contrary set forth in this Section 6.4, Owner shall not be responsible for clean-up, remediation or removal of groundwater contamination migrating to or from an adjacent property not owned by Owner. City and Owner further agree that this Section 6.4 shall not otherwise impose any clean-up, remediation or removal obligations on Owner and that any such obligations shall be governed solely by the applicable law and regulations.

6.5 City to Approve Counsel. With respect to Sections 6.2 through 6.4 above, City reserves the right to either (a) approve the attorney(s) that Owner selects, hires or otherwise engages to defend City, which approval shall not be unreasonably withheld, or (b) conduct its own defense, provided, however, that if City elects to

conduct its own defense, Owner shall reimburse City for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefore. Notwithstanding the foregoing, any such reimbursement shall be limited to costs that directly relate to Owner's indemnification obligations as set forth in Section 6.2 through 6.4 above. City shall not have the right to approve counsel selected by Owner to represent Owner's interests in any litigation.

6.6 Processing During Third Party Litigation. The filing of any third party lawsuit(s) against City or Owner relating to this Agreement, the Development or other development issues affecting the Property shall not delay or stop the Development, processing or construction of the Development, unless the third party obtains a court order preventing said activity. City shall not stipulate to the issuance of any such order.

6.7 Survival. The provisions of Sections 6.1 through 6.7 inclusive, shall survive the termination, cancellation or expiration of this Agreement.

7. DEFAULTS AND REMEDIES.

7.1 Default Defined. A default shall mean a failure by either Party to be in compliance with every term and condition of this Agreement, provided that insignificant or immaterial deviations or failures of compliance shall not constitute a default unless they are cumulatively significant or material. A Default of this Agreement may establish cause for early termination of this Agreement. This provision does not limit the right of either Party to pursue other non-termination remedies permitted by this Section for material defaults which do not constitute a Default.

7.2 Notice and Termination. Before either Party may declare a Default under this Agreement or bring a legal action to terminate this Agreement as a result of said Default, the procedures of this Section 7.2 must be followed. The Party asserting a Default (the "Non-Defaulting Party") may elect to do so by providing written notice to the Party alleged to be in Default (the "Defaulting Party") setting forth the nature of the Default and the actions, if any, required by the Defaulting Party to cure the Default. The Defaulting Party shall be deemed in Default if the Defaulting Party fails to cure the Default within thirty (30) business days after the date of such notice (for monetary defaults) or within (60) sixty business days after the date of such notice (for non-monetary defaults); provided, however, that if the nature of the alleged Default is such that it cannot reasonably be cured within the applicable period (30 or 60 business days, respectively), the Defaulting Party shall not be deemed to be in Default if it has commenced efforts to cure the Default within the applicable time period and continues to diligently pursue completion of the cure.

7.3 Default Remedies. A Party who complies with the notice of default and opportunity to cure requirements of Section 7.2 may, at its option, institute legal

action to cure, correct, or remedy the alleged Default, enjoin any threatened or attempted violation, enforce the terms of this Agreement by specific performance, or pursue any other legal or equitable remedy available under applicable law. These remedies herein shall be cumulative rather than exclusive in accordance with applicable law.

Furthermore, the City, after first following the procedures set forth in Section 7.2, may give notice of its intent to terminate or modify this Agreement for an uncured default, in which event the matter shall be scheduled for consideration and review by the City Council.

7.4 Standard of Review. Any determination by City in accordance with Section 7.3 above that Owner is in Default shall be based on the preponderance of evidence before the City. In any legal action brought by a Party to enforce or interpret this Agreement, the court shall conduct its review of the Parties' compliance hereunder as provided for under applicable law.

7.5 Owner's Exclusive Remedy. City and Owner acknowledge that neither City nor Owner would have entered into this Agreement if it were to be liable in damages under or with respect to the Development. Accordingly, except as stated in the next sentence, neither Party shall sue the other for damages or monetary relief for any matter related to the Development. City may, however, sue Owner for the payment of sums due from Owner to City under provisions of this Agreement which are expressly stated to survive termination of this Agreement, and either Party may sue for attorneys' fees a provided for in Section 9.14 below. Owner's remedies shall be limited to declaratory and injunctive relief, mandate, and specific performance.

7.6 Waiver; Remedies Cumulative. All waivers of performance must be in a writing signed by the Party granting the waiver. There are no implied waivers. Failure by City or Owner to insist upon the strict performance of any provision of this Agreement, irrespective of the length of time for which such failure continues, shall not constitute a waiver of the right to demand strict compliance with this Agreement in the future.

A written waiver affects only the specific matter waived and defines the performance waived and the duration of the waiver. Unless expressly stated in a written waiver, future performance of the same or any other condition is not waived.

A Party who complies with the notice of default and opportunity to cure requirements of Section 7.2 above and elects to pursue a legal or equitable remedy available under this Agreement does not waive its right to pursue any other remedy available under this Agreement, unless prohibited by statute, court rules, or judicial precedent.

Delays, tolling, and other actions arising under Section 9.8 below shall not be

considered waivers subject to this Section 7.6.

7.7 Alternative Dispute Resolution. Any dispute between the Parties may, upon the mutual agreement of the Parties, be submitted to mediation, binding arbitration, or any other mutually agreeable form of alternative dispute resolution. While an alternative dispute process is pending, the statute of limitation shall be tolled for any claim or cause of action which either of the Parties may have against the other under this Agreement, and in such case, the Parties shall enter into a written tolling agreement to that effect.

8. ENCUMBRANCES, ASSIGNMENTS, AND RELEASES.

8.1 Discretion to Encumber. This Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering some or all of the Property or any improvement on the Property by any mortgage, deed of trust, or other security device to secure financing related to the Property or the Development, or otherwise encumbering the Property so long as doing so would not impair any of City's rights hereunder.

8.2 Mortgagee Protection. City acknowledges that the lender(s) providing financing secured by the Property and/or its improvements may require certain Agreement interpretations and modifications. City shall, at any time requested by Owner or the lender, meet with Owner and representatives of such lender(s) to negotiate in good faith any such interpretation or modification. City shall not withhold its consent to any requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Property made in good faith and for value.

(b) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Owner under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the Default during the remaining cure period allowed Owner under Section 7.2 of this Agreement.

(c) Except as otherwise provided within this Agreement, any Mortgagee who comes into possession of some or all of the Property pursuant to foreclosure of a mortgage or deed of trust, or deed in lieu of such foreclosure, shall:

i Take that property subject to the terms of this Agreement and as Owner's successor; and

ii Have the rights and obligations of an Assignee as set forth in Sections 8.3 and 8.4 below.

(d) The Mortgagee shall have the right to rely on the Development assurances contained within this Agreement, provided that any development proposed by the Mortgagee is in conformance with the terms of this Agreement.

(e) The Mortgagee shall not be liable for any Defaults or monetary obligations of Owner arising prior to acquisition of title to the Property by the Mortgagee, except that the Mortgagee may not pursue Development pursuant to this Agreement until all delinquent and current fees and other monetary obligations due under this Agreement for the portions of the acquired by the Mortgagee have been paid to City.

8.3 Transfer or Assignment.

(a) Owner shall not sell, transfer or assign its rights and obligations under this Agreement (collectively, an "Assignment") in connection with a transfer of Owner's interest in all or any portion of the Property ("Transferred Property") without the prior written consent of City Council. However, in responding to a request for consent, City Council shall consider the following conditions and standards and if they are satisfied, the City's consent shall not be unreasonably withheld.

i If significant financial commitments and/or substantial development actions are required by the Assignee to complete the Development, the Assignee must possess the business experience, good reputation and financial resources (or access to financial resources) necessary to complete the Development;

ii The Assignee must execute an assumption and assignment agreement in a form approved by the City Attorney to expressly and unconditionally assume all duties and obligations of Owner under this Agreement remaining to be performed at this time of the Assignment;

iii The Assignment will not cause a substantial delay in the Development; and

iv Owner is not in material breach with respect to its obligations under this Agreement.

(b) Owner's request for City's consent to an Assignment shall be in writing and accompanied by all supporting information to satisfy the conditions set forth in subsection (a) above. Failure to provide any or all of the information required to satisfy the conditions set forth in subsection (a) above shall be grounds to deny the transfer. The City shall have thirty (30) days to approve or deny the requested Assignment. If the City Council

does not act to grant the request within this 30-day period, the City shall be deemed to have granted the Assignment request.

(c) Notwithstanding the foregoing, a transfer between or among Owner and any related entity (e.g., where said entity's managing member is the Owner) is exempt from the requirements of subsection (a) above and does not require the City's consent to transfer.

8.4 Effect of Assignment. Upon an Assignment:

(a) The Assignee shall be liable for the performance of all obligations and shall have all rights of Owner with respect to Transferred Property, but shall have no obligations or rights with respect to the portions of the Property, if any, not transferred (the "Retained Property"). The Assignee and Owner shall enter into an Assignment and Assumption Agreement, whereby Assignee expressly assumes all such obligations. A copy of such agreement shall be provided to City in accordance with Section 8.3 above.

(b) The owner of the Retained Property shall be liable for the performance of all obligations and shall have all rights of Owner with respect to Retained Property, but shall have no further obligations or rights with respect to the Transferred Property.

(c) The Assignee's exercise, use and enjoyment of the Property shall be subject to the terms of this Agreement to the same extent as if the Assignee were the Owner.

9. MISCELLANEOUS PROVISIONS.

9.1 Rules of Construction. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

9.2 Entire Agreement. This Agreement constitutes the entire understanding and agreement of City and Owner with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or previous agreements between City and Owner respecting the subject matter of this Agreement.

9.3 Development as a Private Undertaking. It is specifically understood by City and Owner that (i) the Development is a private development; (ii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property unless City accepts the improvements pursuant to the provisions of this Agreement or unless otherwise provided for in a written agreement executed by City; and (iii) Owner shall have the full power and exclusive control of the Property subject to the obligations of Owner set forth in this Agreement.

9.4 Incorporation of Recitals. Each of the Recitals set forth at the beginning of this Agreement are part of this Agreement.

9.5 Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify, or aid in the interpretation, construction, or meaning of any of the provisions of this Agreement.

9.6 Covenant of Cooperation. City and Owner shall cooperate and deal with each other in good faith, and assist each other in the performance of the provisions of this Agreement.

9.7 Execution and Recording. The City Clerk shall cause a copy of this Agreement to be signed by the appropriate representatives of the City and recorded with the Office of the County Recorder of Contra Costa County, California, within ten (10) days following execution of the Agreement by the Owner and the City.

9.8 Delay, Extension of Time for Performance. Performance by either Party of its obligations under this Agreement shall be excused, and the Term shall be extended, during any period of delay caused at any time by reason of any event beyond the control of City or Owner which prevents or delays performance by City or Owner of obligations under this Agreement. Such events shall include, by way of example and not limitation, acts of nature, enactment of new conflicting federal or state laws or regulations (example: listing of a species as threatened or endangered), judicial actions such as the issuance of restraining orders and injunctions, delay in the issuance of bonds or formation of any community facilities or assessment districts, and riots, strikes, or damage to work in process by reason of fire, floods, earthquake, or other such casualties. If City or Owner seeks excuse from performance, it shall provide written notice of such delay to the other within thirty (30) days of the commencement of such delay. If the delay is excused under this Section 9.8, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon. If a Party disputes the excusable nature of the delay, the Party making the request may seek judicial review of the need for the delay, including requests for injunctive relief.

9.9 Interpretation and Governing Law. In any dispute regarding this Agreement, the Agreement shall be governed and interpreted in accordance with the laws of the State of California.

9.10 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

9.11 Estoppel Certificate. Within fifteen (15) business days following a written request by any of the Parties, the other Party shall execute and deliver to the requesting Party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured Defaults under this Agreement or that the responding Party alleges that specified (date and nature) Defaults exist. The

statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting Party and that there are no uncured Defaults in the performance of the requesting Party, except as may be represented by the requesting Party. The requesting Party shall pay any and all reasonable costs incurred by the responding Party in connection with the issuance of estoppel certificates under this Section prior to issuance of such certificates.

9.12 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

9.13 Counterparts. This instrument may be executed in counterpart originals, all of which together when executed, shall be deemed to be one (1) instrument.

9.14 Future Litigation Expenses.

(a) *Payment to Prevailing Party.* If either Party brings a legal or equitable proceeding against the other Party which arises in any way out of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and all other reasonable costs and expenses incurred in that proceeding.

(b) *Scope of Fees.* Attorneys' fees under this Section shall include attorneys' fees on any appeal and in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the termination of this Agreement.

(c) *Limitation of Liability.* Owner's obligations under this Agreement are solely those of Owner. In no event shall any present, past or future officer, director, shareholder, employee, partner, affiliate, manager, representative or agent of Owner (collectively, "Related Parties") have any personal liability, directly or indirectly, under this Agreement. Recourse in any way connected with or arising from this Agreement shall not be available against any Related Party.

IN WITNESS WHEREOF, the Parties hereto executed this Agreement as of the date(s) written below.

[Signatures on the following pages]

SIGNATURE PAGE TO
PLAZA WAY OVERLAY AGREEMENT

CITY:

THE CITY OF LAFAYETTE, a California municipal corporation

By: _____
Steven Falk
City Manager

ATTEST:

_____ Date: 6-11-13
Joanne Robbins
City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: _____
Malathy Subramanian
City Attorney

SIGNATURE PAGE TO
PLAZA WAY OVERLAY AGREEMENT

OWNER:

Bill L. Poy and Sheu G. Poy

By: _____

Its: owner

By: _____

Its: owner

Date: 11/26/2013

APPROVED AS TO LEGAL FORM:

Miller Starr Regalia

By: _____
Nadia L. Costa

ACKNOWLEDGMENT

State of California
County of Contra Costa)

On November 26/2013 before me, Julie Reimers
(insert name and title of the officer)

personally appeared Bill Poy,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

JULIE REIMERS
Commission # 1933299
Notary Public - California
Monterey County
My Comm. Expires Apr 21, 2015

WITNESS my hand and official seal.

Signature Julie Reimers (Seal)

ACKNOWLEDGMENT

State of California
County of Contra Costa)

On November 26/13 before me, Julie Reimers
(insert name and title of the officer)

personally appeared Shen Poy,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

JULIE REIMERS
Commission # 1933299
Notary Public - California
Monterey County
My Comm. Expires Apr 21, 2015

WITNESS my hand and official seal.

Signature Julie Reimers (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

[Attached behind this page]

PARCEL ONE:

Portion of the Rancho Acalanes, described as follows:

Beginning at a ¾ inch iron pipe set at the intersection of the East line of Moraga Road with the South line of the county road running Easterly therefrom to the West line of the old highway running from Walnut Creek to Lafayette, said point of beginning being also the Northwest corner of the parcel of land described in the deed from Charles J. Krattenmaker to Lee J. O'Connor, dated June 20, 1945 and recorded July 2, 1945 in volume 820 of official records, at page 172; thence from said point of beginning South 6° 28' 30" East, along said East line, 80 feet to a 1 inch iron pipe; thence leaving said line North 82° 47' East, 99 feet to a 1 inch iron pipe; thence South 6° 28' 30" East, 21.69 feet to a 1 inch iron pipe; thence North 82° 47' East, 25.76 feet to a 1 inch iron pipe on the West line of the parcel of land described in the deed from Contra Costa Title Company to William M. McNeil, et ux, dated November 12, 1931 and recorded November 19, 1931 in volume 302 of official records, at page 211; thence North 6° 38' West along said West line, 101.31 feet to the South line of the county road above mentioned being also the North line of said O'Connor parcel (820 or 172); thence South 82° 47' West along said line, 123.96 feet to the point of beginning.

EXPECTING FRM PARCEL ONE: the interest conveyed to Contra Costa County by deed from George W. Coupe, dated October 1, 1956 and recorded October 25, 1956 in volume 2869 of official records, at Page 559 "for street or highway purposes."

PARCEL TWO:

The right of way granted in the deed from Claire Max Hamilton, et al, to Grover R. Estes, et ux, dated April 17, 1946 and recorded April 29, 1946 in volume 905 of official records, at page 436, as follows:

"A right of way (not to be exclusive) as an appurtenance to the tract of land described as parcel one above, for use as a roadway for vehicles of all kinds, pedestrians and animals, for water, gas oil and sewer pipe lines, and for telephone, electric light and power lines, together with the necessary poles or conduits to carry said lines over the following described strip of land:

Beginning at a 1 inch iron pipe on the East line Moraga Road, distant thereon South 6° 28' 30" East, 80 feet from the South line of the county road running Easterly from said Moraga Road to the West line of the old highway running from Walnut Creek to Lafayette, said South line of the county road being also the North line of the parcel of land described in the deed from Charles J. Krattenmaker to Lee J. O'Connor, dated June 20, 1945 and recorded July 2, 1945 in volume 820 of official records, at page 172; thence from said point of beginning North 82° 47' East, 99 feet to a 1 inch iron pipe; thence South 6° 28' 30" East, 24 feet to a 1 inch iron pipe; thence South 82° 47' West, 99 feet to a 1 inch iron pipe on the East line of said Moraga Road; thence North 6° 28' 30" West along said East line, 24 feet to the point of beginning."

EXPECTING FROM PARCEL TWO:

1. "The Southerly three (3) feet" granted in the deed from George W. Coupe, et ux, to Wilbur M. Fowden, dated September 21, 1954 and recorded October 7, 1954 in volume 2394 of official records, at page 207.
2. The interest conveyed to Contra Costa County by deed from Wilbur M. Fowden, et al, dated April 25, 1955 and recorded May 20, 1955 in volume 2536 of official records, at page 468 for "public street on highway purposes."

APN: 243-222-020

MAR 16 1994

94 074855

WHEN RECORDED MAIL TO
Bill and Sheu Poy
7638 Stockton Avenue
El Cerrito, CA 94530

RECORDED AT REQUEST OF Attorney

MAR 16 1994 AT 11 O'CLOCK A M.
CONTRA COSTA COUNTY RECORDS
STEPHEN L WEIR
COUNTY RECORDER
FEE $ 13.00

MAIL TAX STATEMENTS TO
Bill and Sheu Poy
7638 Stockton Avenue
El Cerrito, CA 94530

SURVEY MONUMENT FUND $10

Interspousal Transfer Deed

Grant Deed (Excluded from Reappraisal Under CA Const. Art 13A§1 et. seq.)

The undersigned Grantors declare under penalty of perjury that the following is true and correct: Documentary transfer tax is $-0-. This conveyance changes the manner in which title is held: from joint tenancy to community property.

This is an Interspousal Transfer under §63 of the Revenue and Taxation Code and is excluded from Reappraisal under Proposition 13 as a transfer solely between spouses.

GRANTORS: BILL LIM POY and SHEU G. POY, husband and wife, as joint tenants

hereby GRANT to BILL LIM POY and SHEU G. POY, husband and wife, as community property

the following described real property in the City of Lafayette, County of Contra Costa, State of California:

SEE ATTACHED EXHIBIT A FOR FULL LEGAL DESCRIPTION

Commonly known as: 3535-39 Plaza Way, Lafayette, Ca

AP# 243-222-020-6

Dated: January 7, 1994

Bill Lim Poy
BILL LIM POY

Sheu G. Poy
SHEU G. POY

State of California)
County of Alameda)

On January 7, 1994 before me, Jennifer P. Harding, Notary Public, personally appeared BILL LIM POY and SHEU G. POY,

/ / personally known to me
/X/ proved to me on the basis of satisfactory evidence

to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity on behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Jennifer P. Harding
SIGNATURE OF NOTARY

OFFICIAL SEAL
JENNIFER P. HARDING
Notary Public-California
ALAMEDA COUNTY
My Commission Expires
July 19, 1995

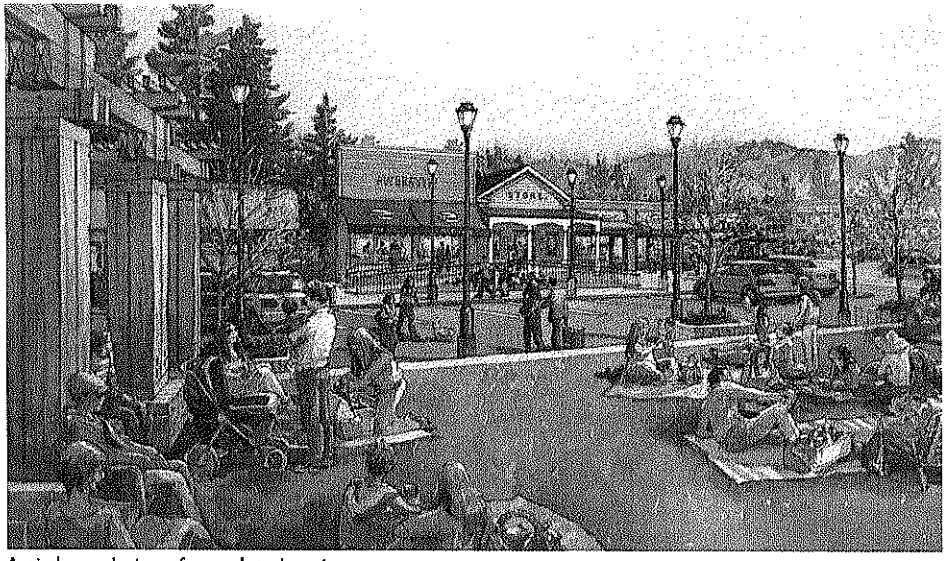
EXHIBIT "B"

DEVELOPMENT PROPOSAL

[Attached behind this page]

Park Plaza Shops - Facade Improvements

996-998 Moraga Road & 3535-3541 Plaza Way, Lafayette, CA 94549
APN: 243-222-020-0



Artist's rendering of completed project

Project Description

The area around Plaza Park, at the intersection of Moraga Road and Mt. Diablo Boulevard, had always served as the heart of the Lafayette community. Ever since the founding parents of Lafayette, "Squire" Elam Brown and Margaret Allen Brown first settled here in 1848, this area had been an active gathering place for both the townspeople and visitors to the area. The City of Lafayette recognizes the importance of this area, recently designating the area as a special Plaza Way Overlay District with a goal of "fully realizing its historical importance and strengthening Lafayette's sense of place". In the Downtown Specific Plan, the Planning Commission called for the "protection of the small village character" of the area and encouraged uses that will optimize the utilization of the plaza, such as cafes, restaurants, and retail. Unfortunately, due to the gradual deterioration of these historic buildings over the last few decades and the difficulties of the current economic times, the shops around Plaza Park have lost their place as the economic and cultural heart of Lafayette. With the improvements in this project, the Poy family proposes to revitalize the Plaza Park area and restore its cultural significance.

The project will entail façade improvements within 4 adjoining buildings and multiple tenants in the Park Plaza area. The modifications will be consistent with the goals set by the City in the Downtown Specific Plan and the Plaza Way Overlay District goals. The focus of the project will be on the oldest of these buildings, the historic Pioneer Store (3537 Plaza Way). It will have the flat parapet addition to the upper façade removed and the historic gabled roof line restored. A new wood porch will be added in front of the storefront to restore the building's character as it appeared in the 1860's. A significant portion of the available funds will be spent on stabilizing all of the buildings structurally and upgrading outdated and deteriorating utilities. Preserving the 4 buildings' historic character and upgrading them to modern retail standards makes this project very expensive on a cost-per-square-foot basis. New facades with wood storefronts will be added to the buildings on either side of the historic Pioneer Store building. The Squirrel building will be enhanced with the addition of soffits, trims, and new lighting at the existing overhang. New entry doors will be added at both tenant locations. These new design elements will enhance the mid-century character of the building. The small village character of the buildings would be achieved with unique storefronts and paint schemes reflecting the personality of each of the tenant spaces. This would be further strengthened with the addition of new fabric awnings and artistic tenant signage. A portion of the building at the rear of the Pioneer Store and Handlebar buildings will be removed and 5 new parking spaces will be created.

The owners intend to lease their space to uses that would invigorate the sidewalk and plaza, such as restaurants, cafes and retail. This will strengthen the Plaza Park area as a gathering place and further shape Lafayette's "sense of place." In order to activate this plaza, one or two food-related tenants will take advantage of the open space in front of Plaza Park for outdoor seating. The outdoor seating area will be prominent enough to convey to the passersby that there is vibrant activity at the plaza, creating a better retail atmosphere than the tenant mix currently on this site, which primarily consisted of destination tenancies. The food tenants and the activity that they bring to this area will be vital to the success of the retail tenancies that will occupy the other spaces.

The existing boardwalk in front of the Pioneer Store and Handlebar buildings provides an excellent opportunity to create a successful outdoor seating area. The raised level of the boardwalk will encourage people to sit and enjoy their food, and allow them to enjoy the view of the plaza over the parking along Plaza Way. Planters placed strategically on each side of the wooden boardwalk would meet ABC requirements (if required, depending on the tenant type), and offset the outdoor dining area from the passersby without having to create a separate divider at grade level. The wooden boardwalk also has historic connotations. Very practical before streets were paved, wooden boardwalks were a necessary part of the 19th century American West and have become an iconic visual connection to the past. The existing boardwalk area will reinforce an important part of the building's character, and is a useful visual element that will draw attention to the building.

Contact List

Owner:
The Poy Family
998 Moraga Road
Lafayette, CA 94549
Contact: Michael Poy
510-604-4665

Property Manager:
Main Street Property Services
3569 Mt. Diablo Blvd.
Suite 200
Lafayette, CA 94549
Contact: Craig Semmelmeyer
925-299-8170

Architect:
SZFM Design Studio
601 Fourth Street
Loft 211
San Francisco, CA 94107
Contact: Ryan Hayashida
415-956-5515 x 24

Drawing List

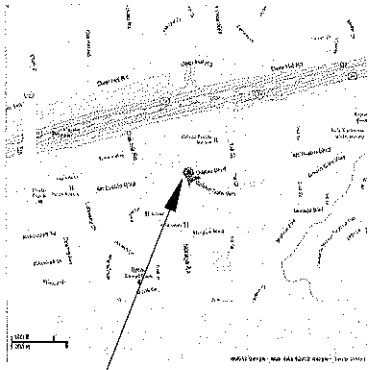
1	Cover Sheet
2	Site and Vicinity Plans
3	Plaza Way Block Elevation and Section through Plaza Park
4	Proposed Plan
5	Existing and Proposed North (Plaza Way) Elevations
6	Existing and Proposed West (Moraga Road) Elevations
7	Existing and Proposed South Elevation
8	Enlarged Plan - Buildings A & B seating area
9	Building A Section
10	Building B (Pioneer Store) Section and Detail Section of Pediment
11	Building C Section
12	Building D Section and Detail Section of Overhang
13	Demolition Plan
14	Roof Plan
15	Demolition and Proposed North (Plaza Way) Elevations
16	Demolition and Proposed West (Moraga Road) Elevations
17	Building B & C West Elevations
18	Demolition and Proposed South Elevation
19	Materials & Color Board

5/10/12

SZFM DESIGN STUDIO

Cover Sheet

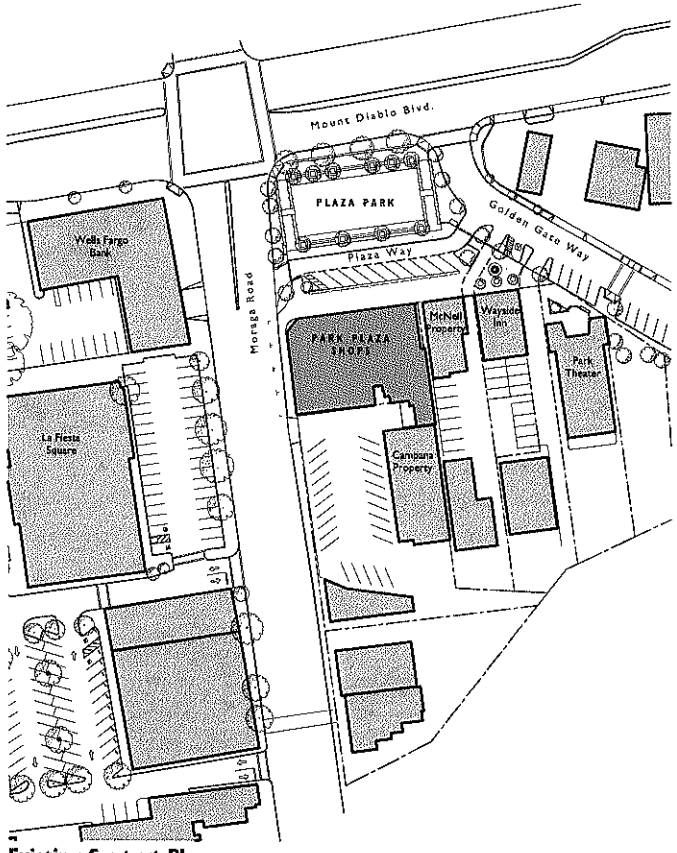
Park Plaza Shops . Lafayette



Vicinity Plan

Project Address:
3535-3541 Plaza Way
996-998 Moraga Road
Lafayette, CA 94549

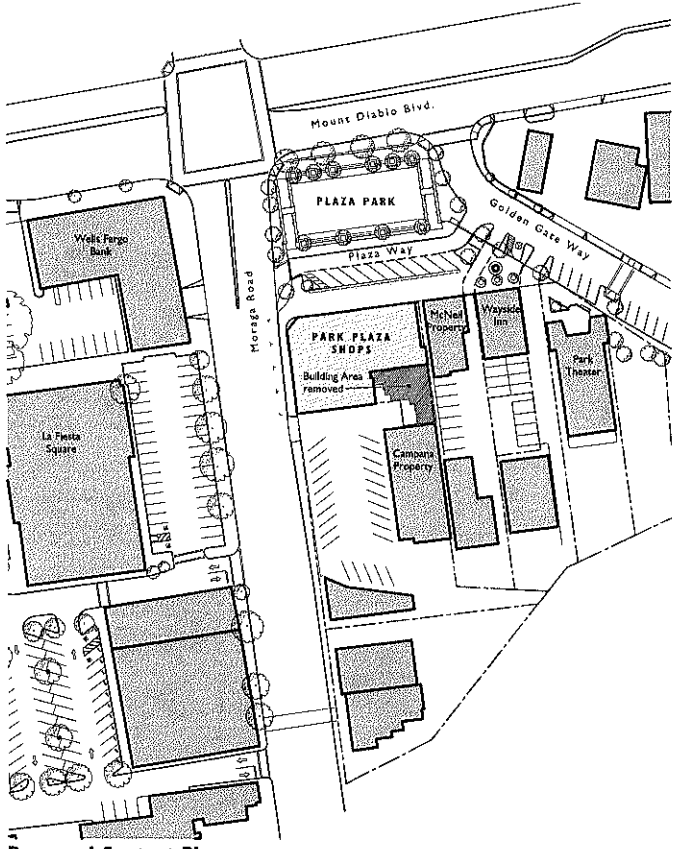
APN: 243-222-020-0



Existing Context Plan

Area Calculations:

Existing Building Footprint:	8,873 SF
Existing Gross Floor Area:	9,150 SF



Proposed Context Plan

Area Calculations:

Proposed Building Footprint:	7,514 SF
Proposed Gross Floor Area:	7,514 SF

N

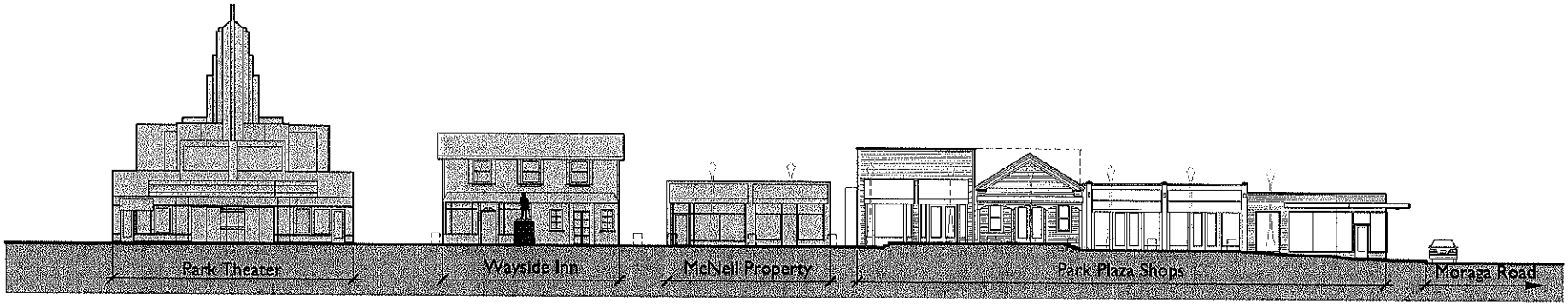
BSZFME DESIGN STUDIO

Site and Vicinity Plans

5/10/12

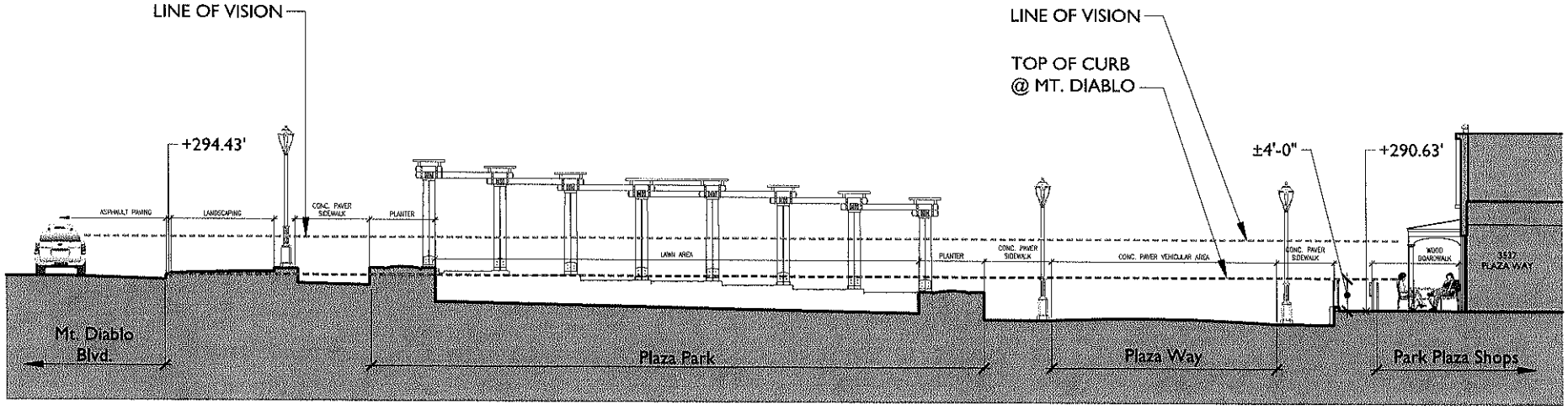
Park Plaza Shops . Lafayette

0 50' 100'



Plaza Way Elevation

0 32'



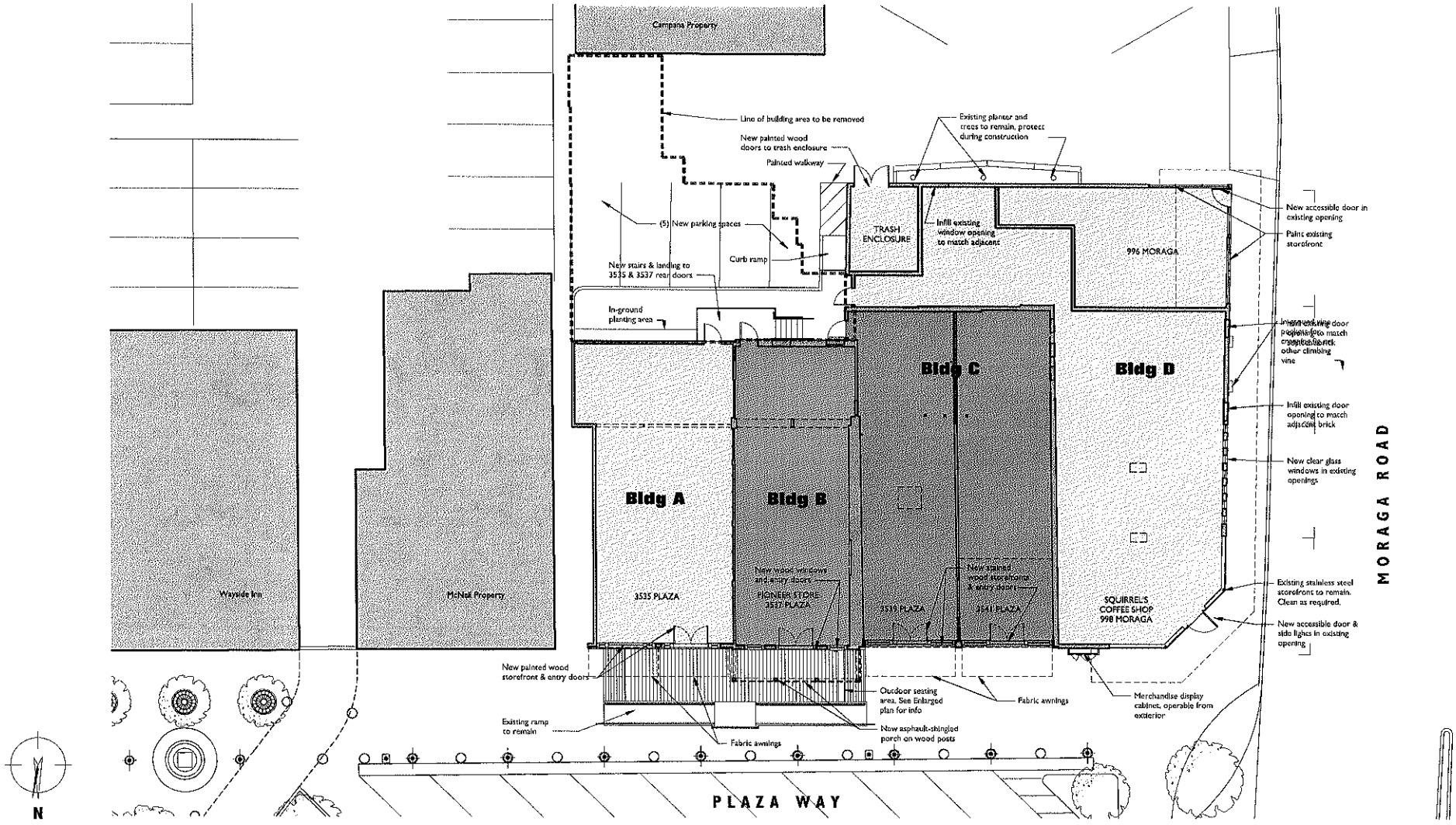
Section through Plaza Park

0 16'

Plaza Way Block Elevation and Section through Plaza Park

5/10/12

Park Plaza Shops . Lafayette


Campana Property
Line of building area to be removed
New painted wood doors to trash enclosure
Painted walkway
Existing planter and trees to remain, protect during construction
(5) New parking spaces
Curb ramp
New stairs & landing to 3535 & 3537 rear doors
In-ground planting area
TRASH ENCLOSURE
Infill existing window opening to match adjacent
996 MORAGA
New accessible door in existing opening
Paint existing storefront
Bldg A
Bldg B
Bldg C
Bldg D
Infill existing door opening to match adjacent brick
New clear glass windows in existing openings
Existing stainless steel storefronts to remain. Clean as required.
New accessible door & side lights in existing opening
Wayside Inn
McNal Property
3535 PLAZA
PIONEER STORE 3537 PLAZA
3539 PLAZA
3541 PLAZA
SQUIRREL'S COFFEE SHOP 998 MORAGA
New painted wood storefront & entry doors
Outdoor seating area. See Enlarged plan for info
Fabric awnings
Merchandise display cabinet, operable from exterior
Existing ramp to remain
New asphault-shingled porch on wood posts
Fabric awnings
PLAZA WAY
MORAGA ROAD
N

SZFM DESIGN STUDIO

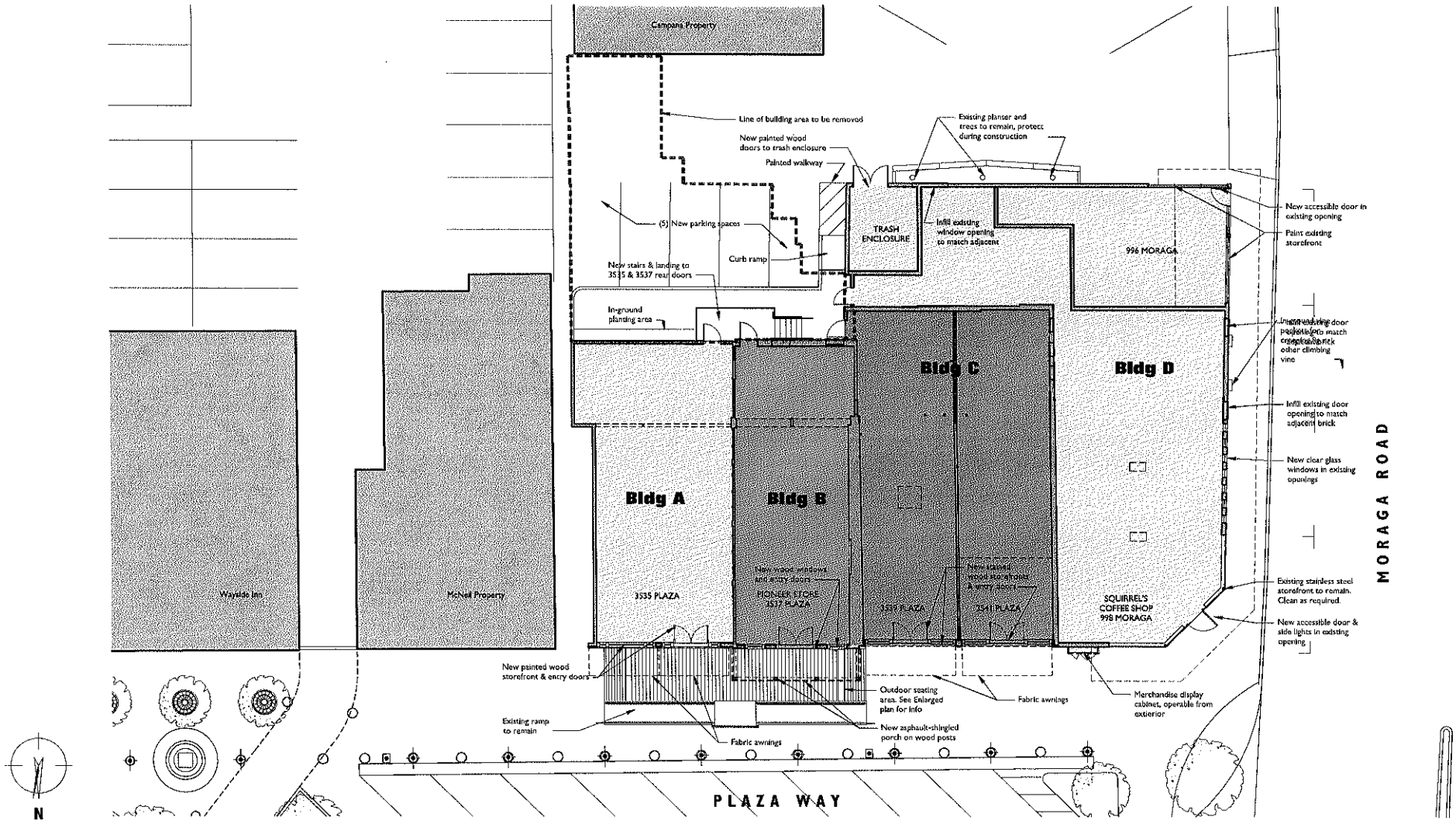
Proposed Plan

Park Plaza Shops . Lafayette

5/10/12

0 8' 16'

4


Campana Property
Line of building area to be removed
New painted wood doors to trash enclosure
Painted walkway
Existing planter and trees to remain, protect during construction
(5) New parking spaces
Curb ramp
New stairs & landing to 3535 & 3537 rear doors
In-ground planting area
TRASH ENCLOSURE
Infill existing window opening to match adjacent
996 MORAGA
New accessible door in existing opening
Paint existing storefront
Bldg A
Bldg B
Bldg C
Bldg D
Infill existing door opening to match adjacent brick
New clear glass windows in existing openings
Wayside Inn
McNeil Property
3535 PLAZA
PIONEER STORE
3537 PLAZA
3539 PLAZA
3541 PLAZA
SQUIRREL'S COFFEE SHOP
998 MORAGA
Existing stainless steel storefront to remain. Clean as required.
New accessible door & side lights in existing opening
MORAGA ROAD
New painted wood storefront & entry doors
Existing ramp to remain
Outdoor seating area. See Enlarged plan for info
Fabric awnings
Merchandise display cabinet, operable from exterior
New asphault-shingled porch on wood posts
PLAZA WAY
N

BSZFMN DESIGN STUDIO

Proposed Plan

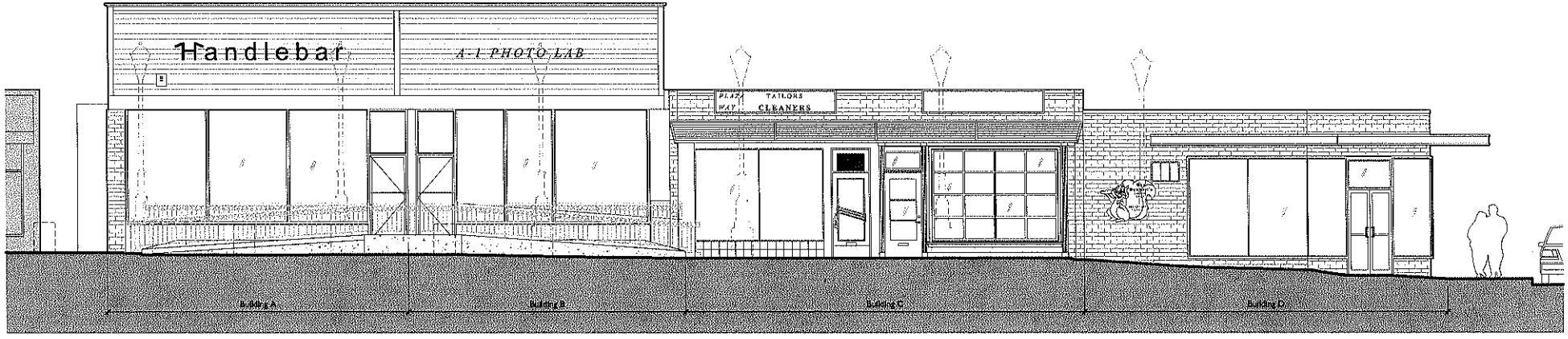
Park Plaza Shops . Lafayette

5/10/12

0 8' 16'

4

Proposed North Elevation



Existing North Elevation

NSZFMN DESIGN STUDIO

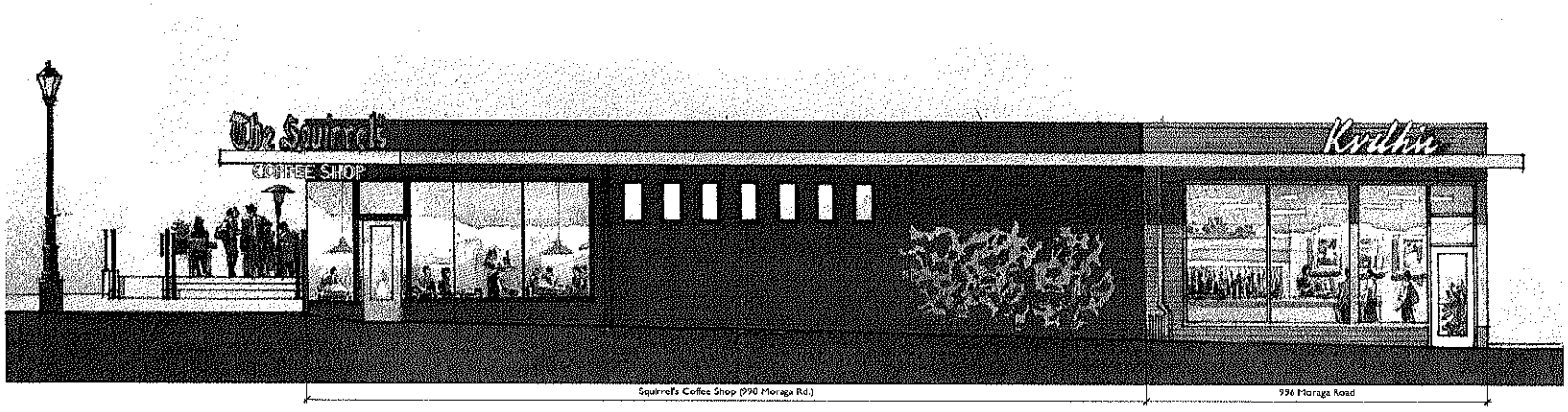
Existing and Proposed North (Plaza Way) Elevation

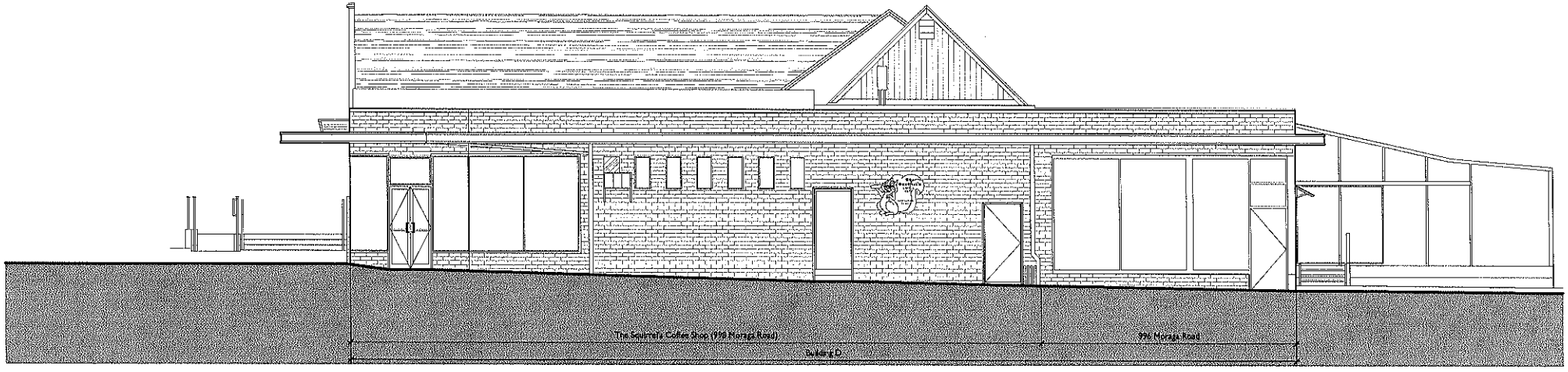
5/10/12

Park Plaza Shops . Lafayette

0 4' 8'

5





HSZFMH DESIGN STUDIO

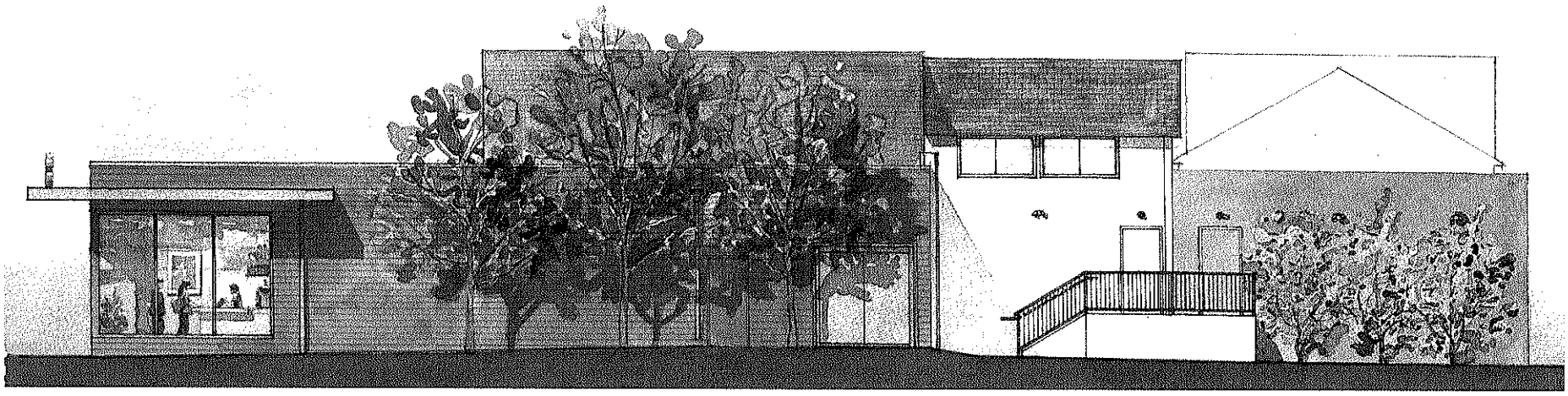
Existing and Proposed West (Moraga Road) Elevation

Park Plaza Shops . Lafayette

5/10/12

0 4' 8'

6



Proposed South Elevation

Existing South Elevation

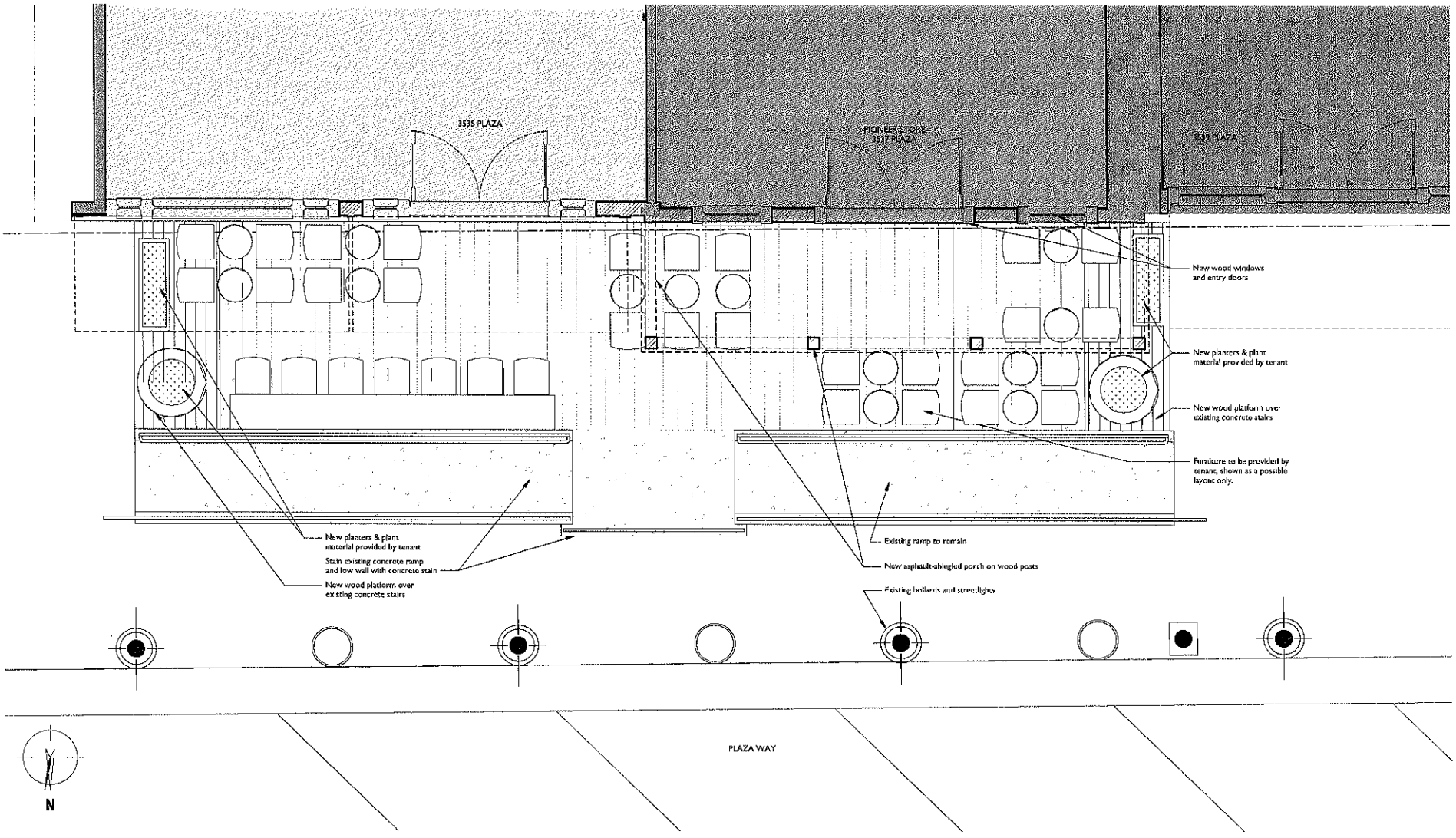
SZFMX DESIGN STUDIO

Existing and Proposed South Elevations

5/10/12

Park Plaza Shops . Lafayette

0 4' 8'


3535 PLAZA
PIONEER STORE
3517 PLAZA
3519 PLAZA
New wood windows and entry doors
New planters & plant material provided by tenant
New wood platform over existing concrete stairs
Furniture to be provided by tenant, shown as a possible layout only.
New planters & plant material provided by tenant
Stain existing concrete ramp and low wall with concrete stain
New wood platform over existing concrete stairs
Existing ramp to remain
New asphault-shingled porch on wood posts
Existing bollards and streetlights
PLAZA WAY
N

RSZFMB DESIGN STUDIO

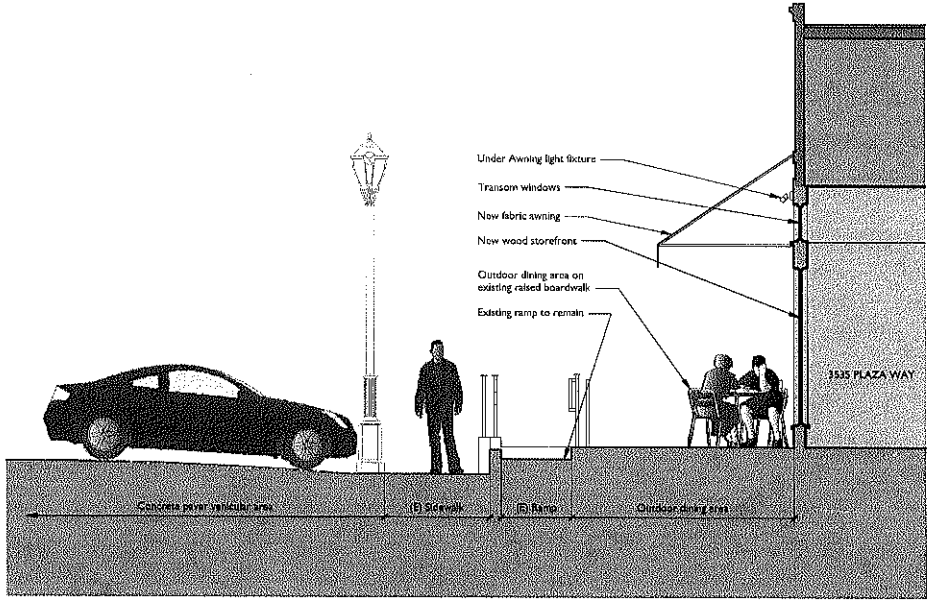
Enlarged Plan - Buildings A & B seating area

Park Plaza Shops . Lafayette

5/10/12

0 2' 4'

8



Section @ 3535 Plaza Way (Building A)

SZFMB DESIGN STUDIO

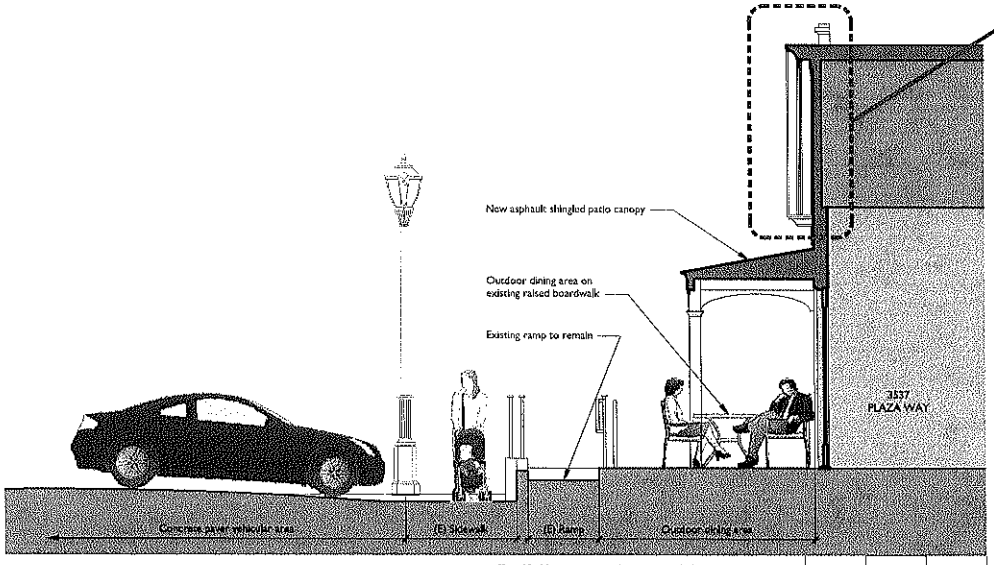
Building A Section

Park Plaza Shops . Lafayette

5/10/12

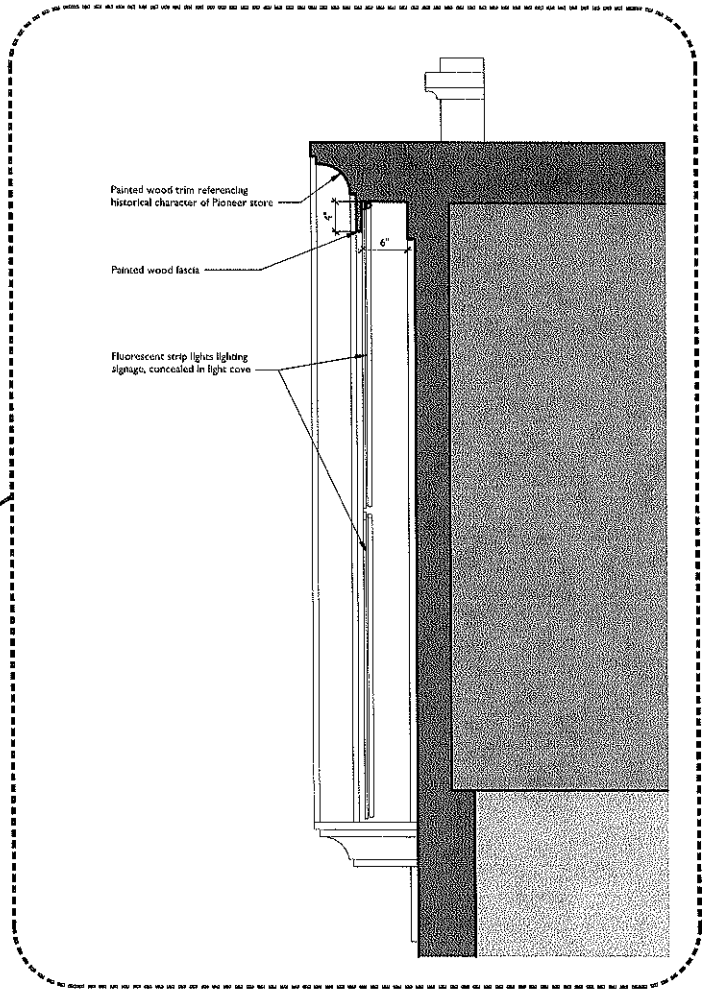
0 **8'**

Original pediment of Pioneer Store



Building section at Plaza Way

0 8'


Painted wood trim referencing historical character of Pioneer store
Painted wood fascia
Fluorescent strip lights lighting signage, concealed in light cove
6"

Detail section of pediment

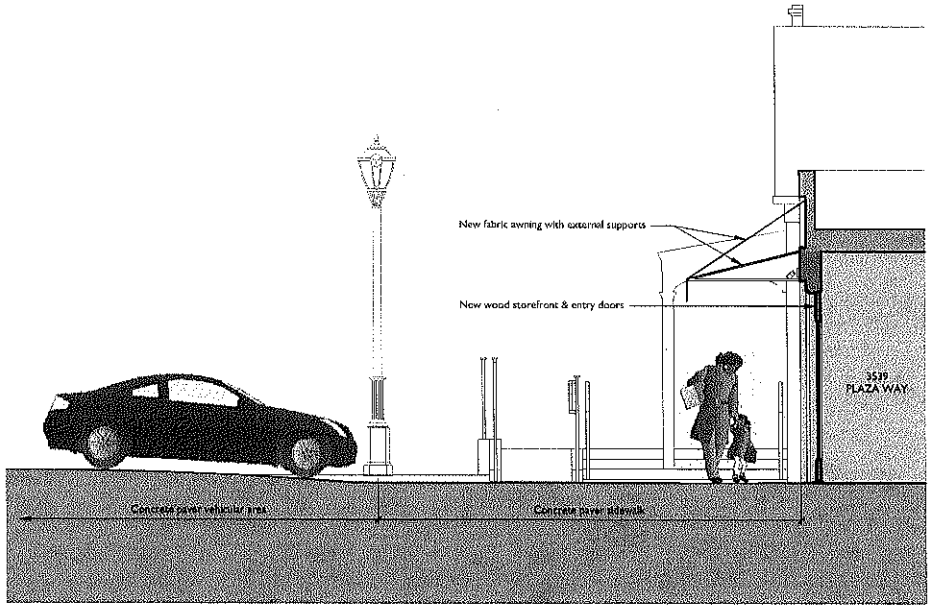
0 8'

Building B Section (Pioneer Store) & Detail Section of Pediment

5/10/12

SZFMH DESIGN STUDIO

Park Plaza Shops . Lafayette



Section @ 3539 Plaza Way (Building C)

SZFM DESIGN STUDIO

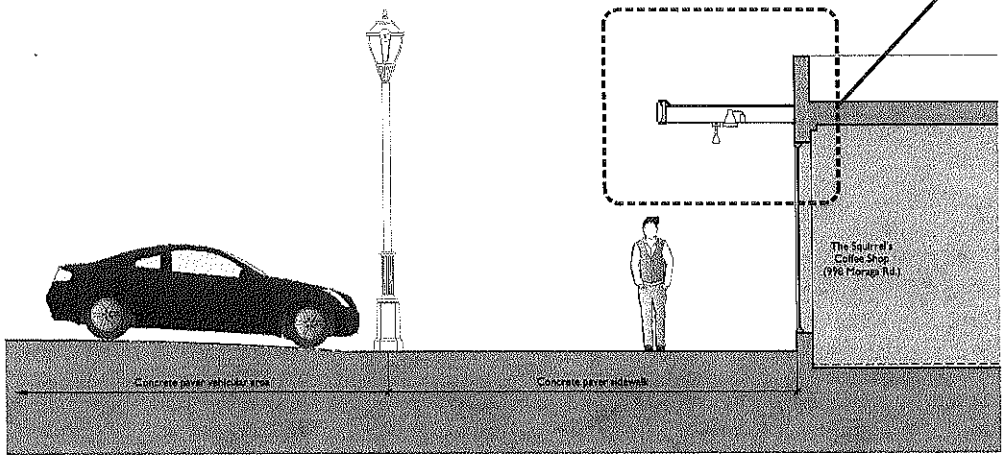
Building C Section

Park Plaza Shops . Lafayette

5/10/12

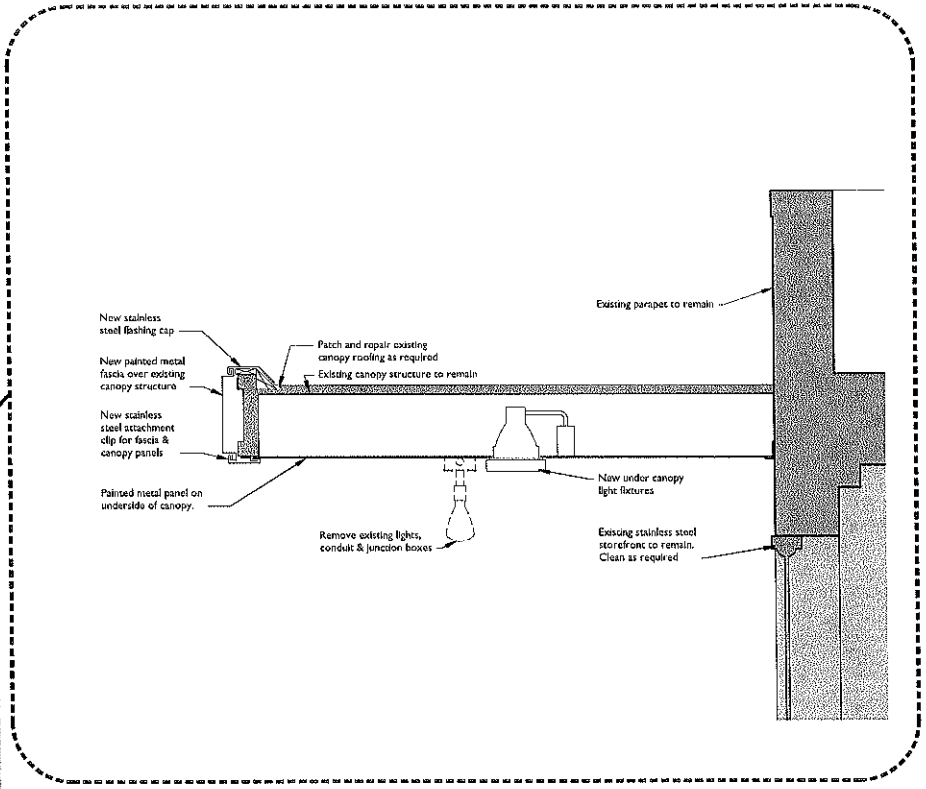
0 **8'**

Existing condition of overhang



Building D section at Plaza Way

0 8'


New stainless steel flashing cap
New painted metal fascia over existing canopy structure
New stainless steel attachment clip for fascia & canopy panels
Painted metal panel on underside of canopy.
Patch and repair existing canopy roofing as required
Existing canopy structure to remain
Existing parapet to remain
New under canopy light fixtures
Remove existing lights, conduit & junction boxes
Existing stainless steel storefront to remain. Clean as required

Detail Section of overhang

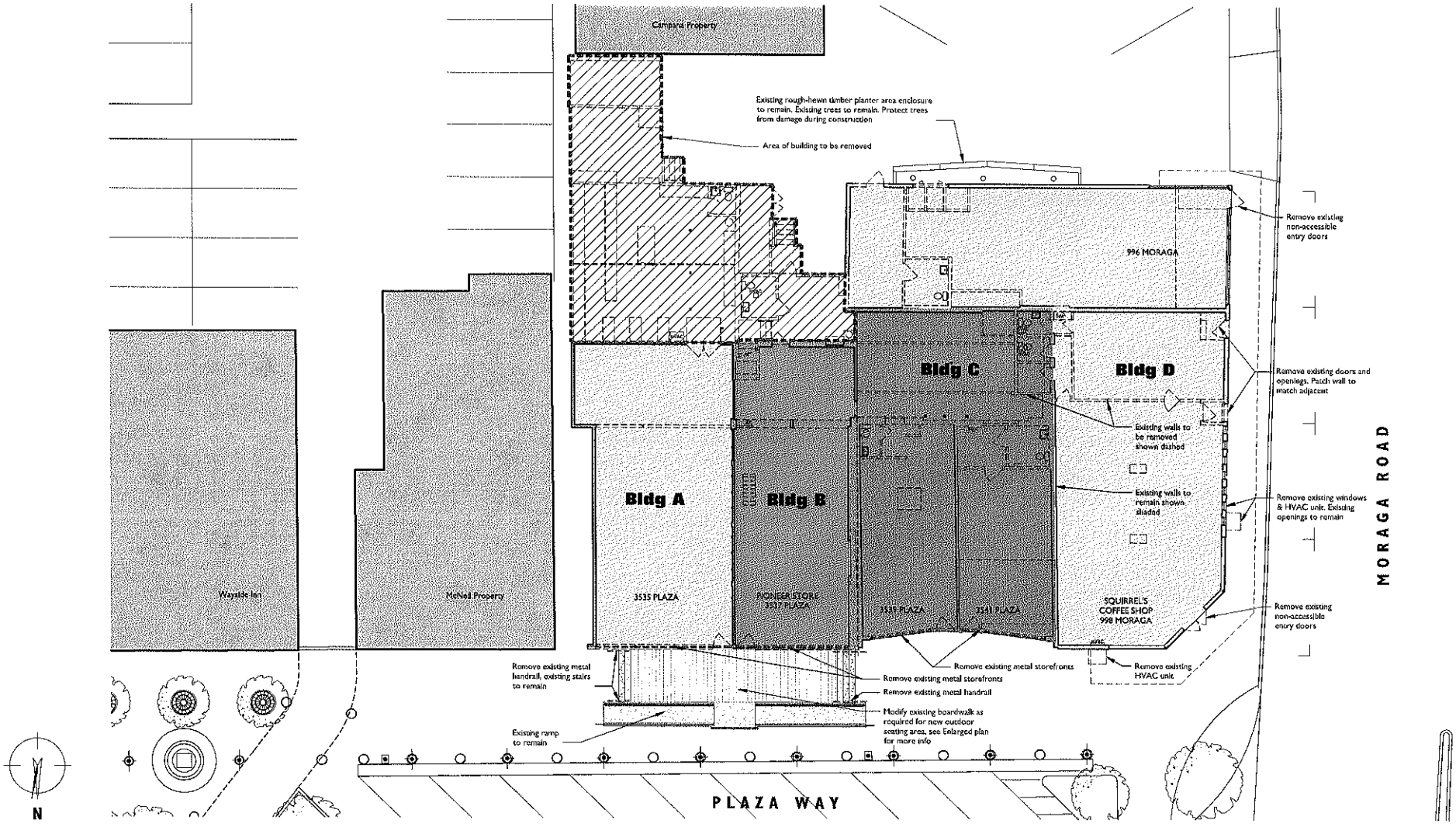
0 8'

NSZFMH DESIGN STUDIO

Building D Section (Squirrel building) & Detail Section of overhang

5/10/12

Park Plaza Shops . Lafayette


Caltrans Property
Existing rough-hewn timber planter area enclosure to remain. Existing trees to remain. Protect trees from damage during construction
Area of building to be removed
Remove existing non-accessible entry doors
996 MORAGA
Bldg C
Bldg D
Remove existing doors and openings. Patch wall to match adjacent
Existing walls to be removed shown dashed
Existing walls to remain shown shaded
Remove existing windows & HVAC unit. Existing openings to remain
Bldg A
Bldg B
Wayside Inn
McNeil Property
3535 PLAZA
PIONEER STORE
3537 PLAZA
3539 PLAZA
3541 PLAZA
SQUIRREL'S COFFEE SHOP
998 MORAGA
Remove existing non-accessible entry doors
MORAGA ROAD
Remove existing metal handrail, existing stairs to remain
Remove existing metal storefronts
Remove existing metal storefronts
Remove existing HVAC unit
Remove existing metal handrail
Modify existing boardwalk as required for new outdoor seating area, see Enlarged plan for more info
Existing ramp to remain
PLAZA WAY
N

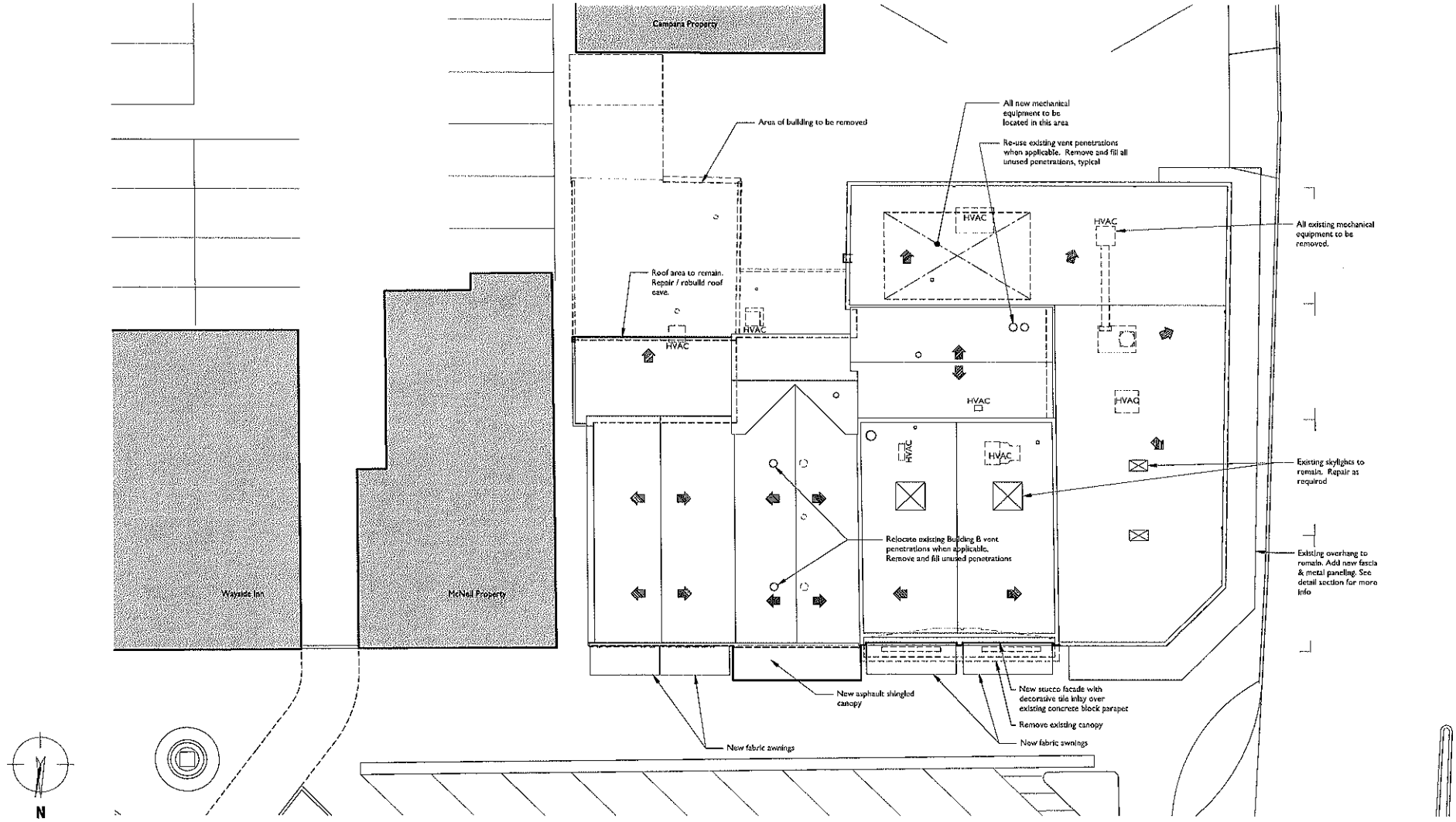
Demolition Plan

Park Plaza Shops . Lafayette

5/10/12

0 8' 16'

13


Campora Property
Area of building to be removed
All new mechanical equipment to be located in this area
Re-use existing vent penetrations when applicable. Remove and fill all unused penetrations, typical
HVAC
All existing mechanical equipment to be removed.
Roof area to remain. Repair / rebuild roof cave.
Existing skylights to remain. Repair as required
Relocate existing Building B vent penetrations when applicable. Remove and fill unused penetrations
Existing overhang to remain. Add new fascia & metal panelling. See detail section for more info
Wayside Inn
McNeil Property
New asphalt shingled canopy
New stucco facade with decorative tile inlay over existing concrete block parapet
Remove existing canopy
New fabric awnings
N

MSZFMN DESIGN STUDIO

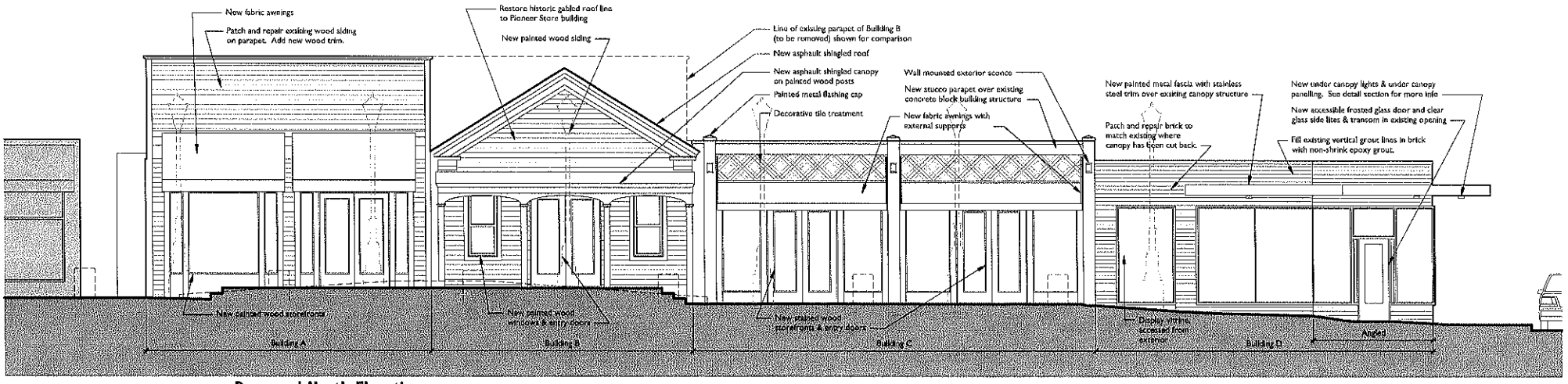
Roof Plan

Park Plaza Shops . Lafayette

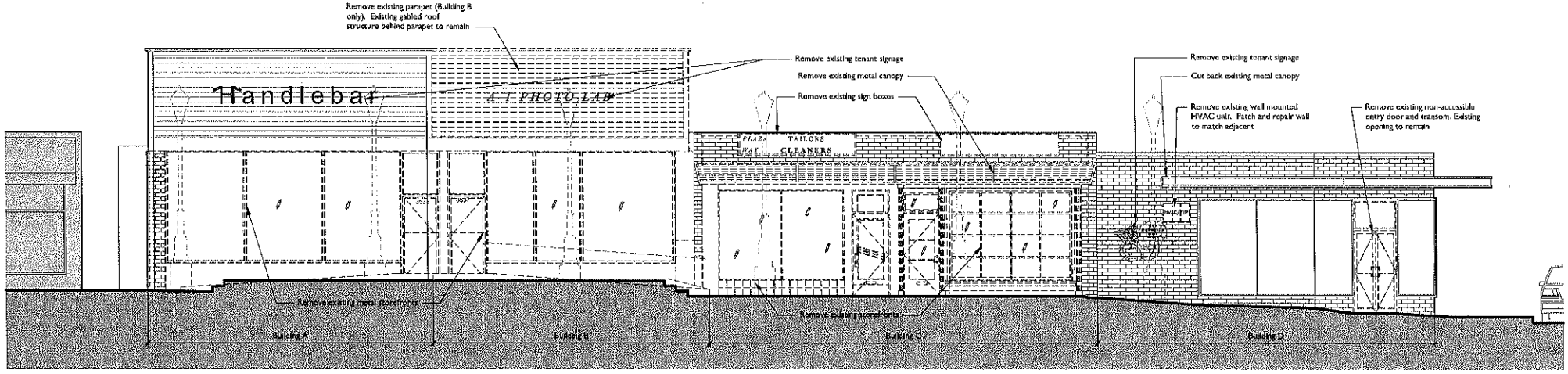
5/10/12

0 8' 16'

14


New fabric awnings
Patch and repair existing wood siding on parapet. Add new wood trim.
Restore historic gabled roof line to Pioneer Store building
New painted wood siding
Line of existing parapet of Building B (to be removed) shown for comparison
New asphault shingled roof
New asphault shingled canopy on painted wood posts
Painted metal flashing cap
Decorative tile treatment
Wall mounted exterior sconce
New stucco parapet over existing concrete block building structure
New fabric awnings with external supports
New painted metal fascia with stainless steel trim over existing canopy structure
Patch and repair brick to match existing where canopy has been cut back.
New under canopy lights & under canopy panelling. See detail section for more info
New accessible frosted glass door and clear glass side lites & transom in existing opening
Fill existing vertical grout lines in brick with non-shrink epoxy grout.
New painted wood storefronts
New painted wood windows & entry doors
New painted wood storefronts & entry doors
Display window accessed from exterior
Building A
Building B
Building C
Building D
Angled

Proposed North Elevation


Remove existing parapet (Building B only). Existing gabled roof structure behind parapet to remain
Handlebar
A-1 PHOTO LAB
Remove existing tenant signage
Remove existing metal canopy
Remove existing sign boxes
PLAZA WAY
TAILORS
CLEANERS
Remove existing tenant signage
Cut back existing metal canopy
Remove existing wall mounted HVAC unit. Patch and repair wall to match adjacent
Remove existing non-accessible entry door and transom. Existing opening to remain
Remove existing metal storefronts
Remove existing storefronts
Building A
Building B
Building C
Building D

Demolition North Elevation

MSZFMK DESIGN STUDIO

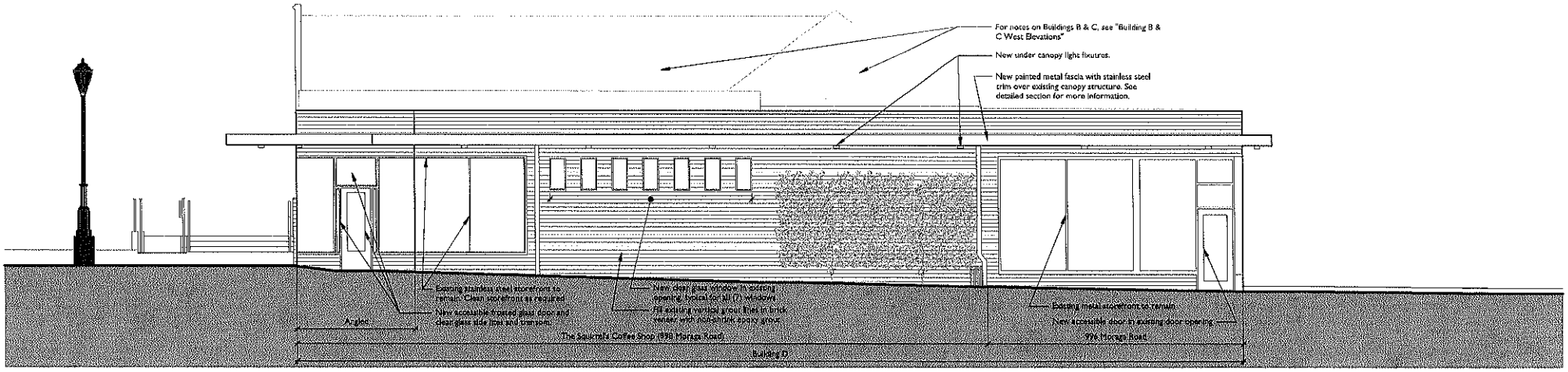
Demolition and Proposed North (Plaza Way) Elevations

5/10/12

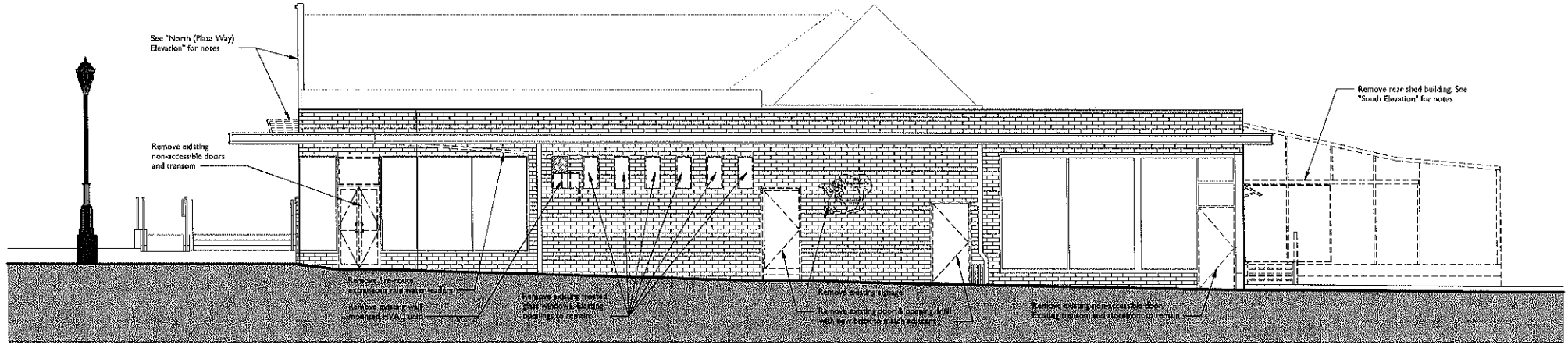
Park Plaza Shops . Lafayette

0 4' 8'

15


For notes on Buildings B & C, see "Building B & C West Elevations"
New under canopy light fixutres.
New painted metal fascia with stainless steel trim over existing canopy structure. See detailed section for more information.
Existing stainless steel storefront to remain. Clean storefront as required
New accessible framed glass door and clear glass side lite and transom
New clear glass window in existing opening. Typical for all (7) windows
fill existing mortar grout lines in brick veneer with color mix epoxy grout
Existing metal storefront to remain
New accessible door in existing door opening
A-gas
The Squirrel's Coffee Shop (990 Moraga Road)
994 Moraga Road
Building D

Proposed West Elevation


See "North (Plaza Way) Elevation" for notes
Remove existing non-accessible doors and transom
Remove rear shed building. See "South Elevation" for notes
Remove / Relocate existing roof rain water leaders
Remove existing wall mounted HVAC unit
Remove existing framed clear windows. Existing openings to remain
Remove existing signage
Remove existing door & opening. Infill with new brick to match adjacent
Remove existing non-accessible door. Existing transom and storefront to remain

Demolition West Elevation

SZFM DESIGN STUDIO

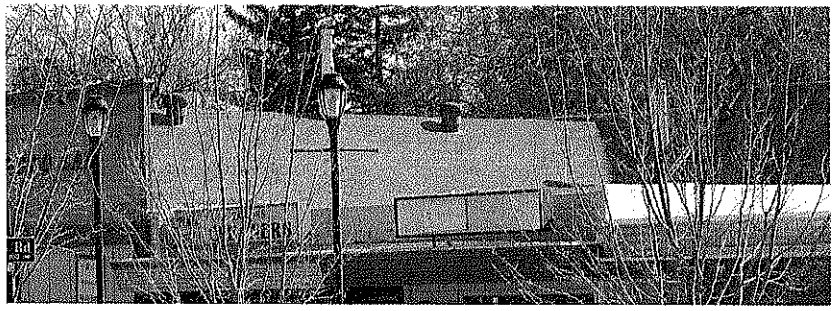
Demolition and Proposed West (Moraga Road) Elevations

5/10/12

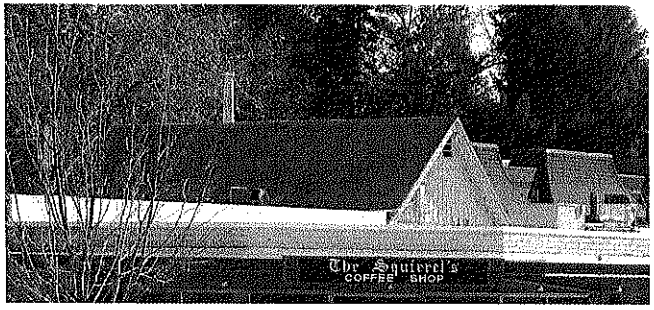
Park Plaza Shops . Lafayette

0 4' 8'

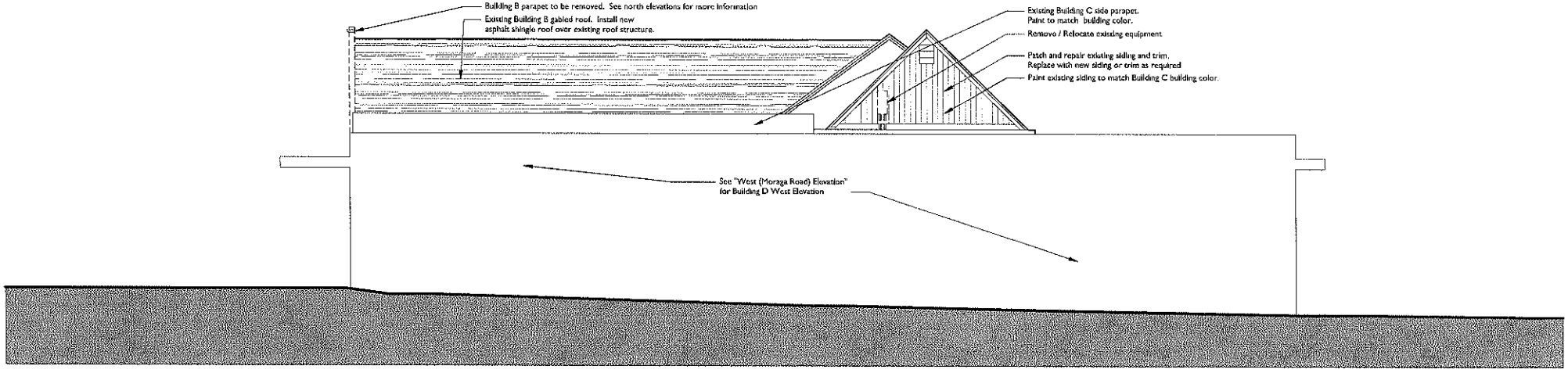
16

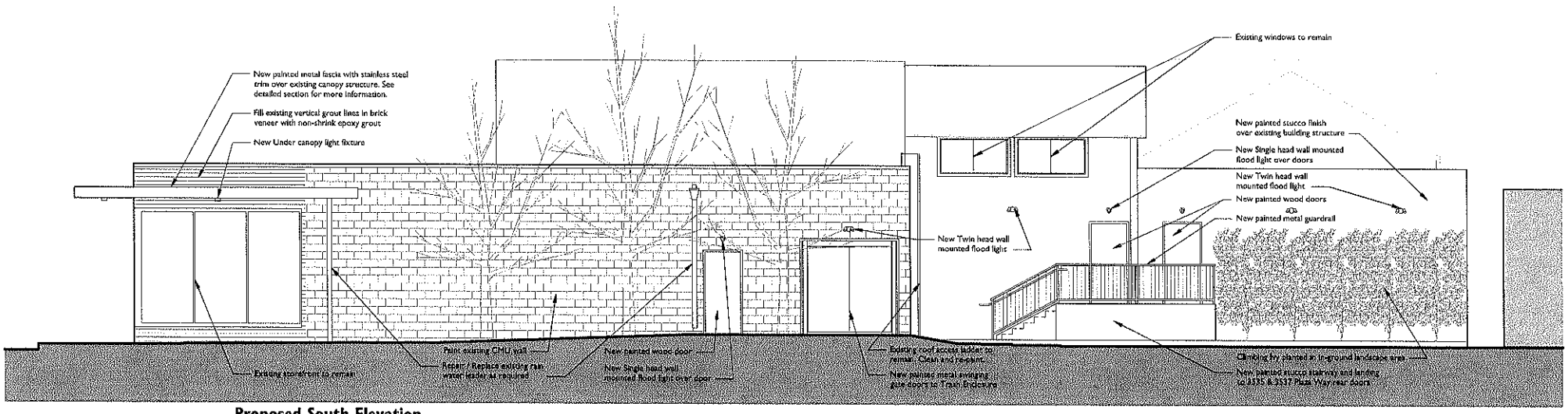


Existing West side of Building B

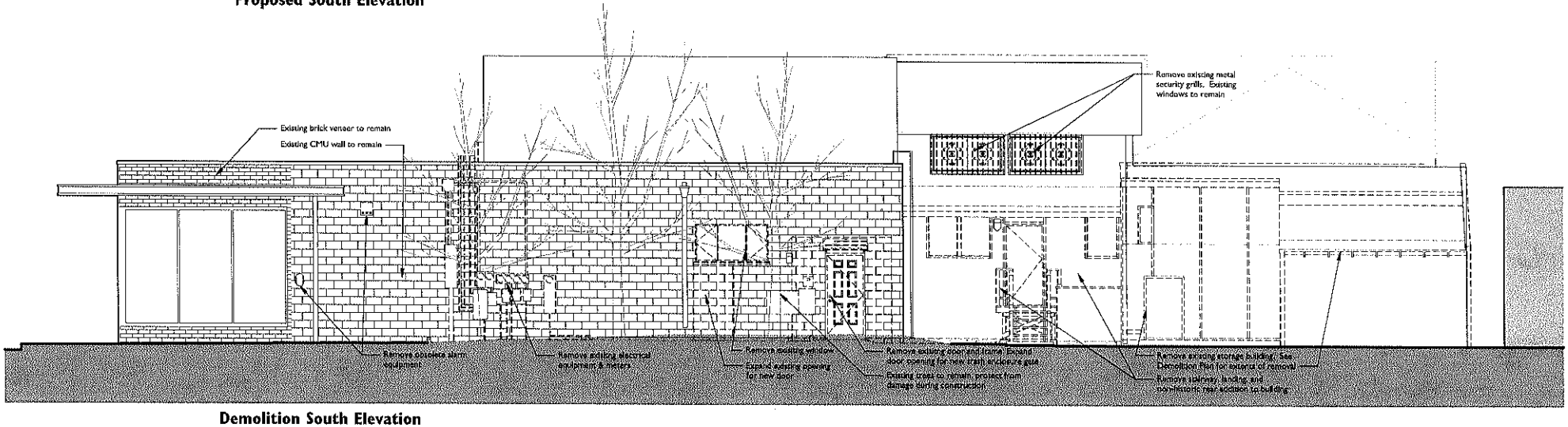


Existing West side of Building C


Building B parapet to be removed. See north elevations for more information
Existing Building B gabled roof. Install new asphalt shingle roof over existing roof structure.
Existing Building C side parapet. Paint to match building color.
Remove / Relocate existing equipment
Patch and repair existing siding and trim. Replace with new siding or trim as required
Paint existing siding to match Building C building color.
See "West (Moraga Road) Elevation" for Building D West Elevation


New painted metal fascia with stainless steel trim over existing canopy structure. See detailed section for more information.
Fill existing vertical grout lines in brick veneer with non-shrink epoxy grout
New Under canopy light fixture
Existing windows to remain
New painted stucco finish over existing building structure
New Single head wall mounted flood light over doors
New Twin head wall mounted flood light
New painted wood doors
New painted metal guardrail
New Twin head wall mounted flood light
Existing roof access ladder to remain. Clean and recoat.
Existing tree/shrub to remain
Paint existing CMU wall
Repair / Replace existing rain water leader as required
New painted metal door
New Single head wall mounted flood light over door
New painted metal swinging gate doors to Trash Enclosure
Climbing ivy planted in in-ground landscape area
New painted wrought iron railings and landing to 3535 & 3537 Pleze Way rear doors

Proposed South Elevation


Existing brick veneer to remain
Existing CMU wall to remain
Remove existing metal security grills. Existing windows to remain
Remove existing storage building. See Demolition Plan for extents of removal
Remove louvers, backing and non-historic rear addition to building
Remove existing window
Remove existing door and frame. Expand door opening for new trash enclosure gate
Existing trees to remain, protect from damage during construction
Expand existing opening for new door
Remove existing electrical equipment & meters
Remove security alarm equipment

Demolition South Elevation

Demolition and Proposed South Elevation

Park Plaza Shops . Lafayette

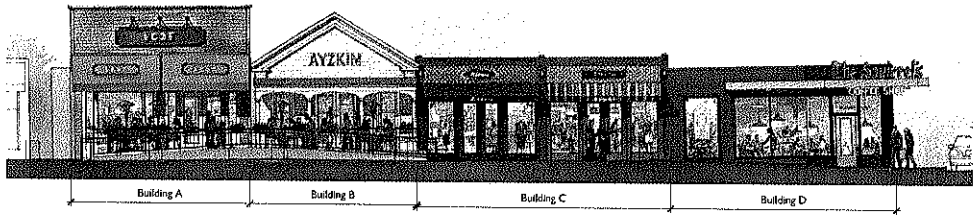
5/10/12

0 4' 8'

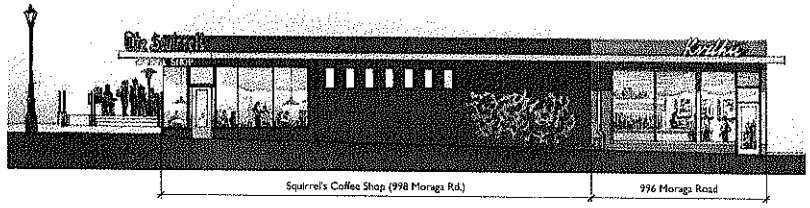
18

Materials & Color Board

Note: All tenant colors (storefront, awnings, tile, etc.) may change to reflect Tenant's color palette once tenants have been finalized. The colors shown here are proposed colors to be used in the event that the building is finished prior to tenant occupancy. Any change from colors reflected in this proposed color board will be submitted for City's approval along with tenant signage application.



Plaza Way Elevation



Moraga Road Elevation

Building A

(3535 Plaza Way)

BUILDING COLOR
Painted wood siding:
Dunn Edwards
DE6207
"Egyptian Sand"

STOREFRONT COLOR
Painted wood storefront:
Dunn Edwards
DE 5358
"Ivory Oats"

AWNING FABRIC
Sunbrella
4619-0000
"Pumpkin"

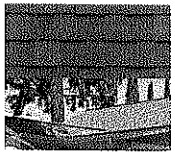
GOOSENECK SIGN LIGHTING
BK Lighting
Sign Star, Style D
Finish: Satin Bronze

Note: photo represents fixture only, not intended to represent proposed finish

Building B

Pioneer Score Building
(3537 Plaza Way)

BUILDING COLOR
Painted wood siding:
Dunn Edwards
DEW341
"Swiss Coffee"

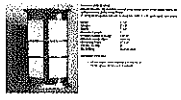


ROOFING MATERIAL
Asphault shingles
CertainTeed
Landmark Solaris
Color: Dusky Clay

UNDER CANOPY LIGHTING
Rejuvenation Lighting
"Sabin"
Flush mount ceiling fixture
Finish: Burnished Antique

Building C

BASE BUILDING COLOR
Painted stucco:
Dunn Edwards
DEC 705
"Burnt Crimson"



WALL MOUNTED EXTERIOR SCONCES
Arroyo Craftsman
Newport
#NS-9LNRW
Finish: Antique Bronze

Note: photo represents fixture only, not intended to represent proposed finish

Tenant "A"
(3539 Plaza Way)

DECORATIVE TILE COLORS
Recycled Glazed Ceramic Tile
Fireclay
Debris Series
"Lapis Gloss"

Fireclay
Debris Series
"Denim"

AWNING FABRIC
Sunbrella
4678-000
"Marine Blue"

Tenant "B"
(3541 Plaza Way)

DECORATIVE TILE COLORS
Recycled Glazed Ceramic Tile
Fireclay
Debris Series
"Goldenrod"

Fireclay
Debris Series
"Pumpkin Matte"

AWNING FABRIC
Sunbrella
4985-000
"Havelock Brick"

Building D

Squirrel's Coffee Shop
(998 Moraga Road)

BUILDING COLOR
Painted brick veneer:
Dunn Edwards
DE6280
"English Forest"

OVERHANG COLOR
Painted metal trim
Dunn Edwards
DE5431
"Candelabra"

Tenant "B"
(996 Moraga Road)

BUILDING COLOR
Painted brick veneer:
Dunn Edwards
DE5718
"Mother Earth"

OVERHANG COLOR
Painted metal trim
Dunn Edwards
DE5431
"Candelabra"

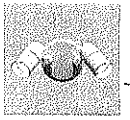
UNDER CANOPY LIGHTS
Lightolier
Lytecaster Recessed
Downlighting
6-3/4" Aperture Opal
DiskDiffuser Reflector Trim
7-7/8" diameter
1-7/8 depth from ceiling

Miscellaneous Building Lighting

Used at various locations on multiple buildings - See elevations (rear elevation,under awnings, etc.)

SINGLE HEAD WALL MOUNTED FLOOD LIGHT
Lumiere
Westwood 903
Finish: Bronze

Note: photo represents fixture only, not intended to represent proposed finish



TWIN HEAD WALL MOUNTED FLOOD LIGHT
Lumiere
Westwood 903-2
Finish: Bronze

Note: photo represents fixture only, not intended to represent proposed finish